4
LEVEL

Fiqh

Islamic Jurisprudence

العبيكان للتعليم
Obeikan Education

ENGLISH EDITION

Fiqh

Islamic Jurisprudence

Level 4

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بسم الله الرحمن الرحيم

Preface

Praise be to Allah, Lord of the worlds, and blessings and peace be upon the noblest of the Prophets and Messengers, our Prophet Muhammad, and upon all his family and Companions. To proceed:

Islamic knowledge is one of the most important necessities that the Muslim needs in his life; the entire ummah, in its efforts to rebuild Islamic civilization, is in need of it. Hence the religious texts point out the importance of Islamic knowledge and its bearers. Allah عَزَّوَجَلَّ says: *{Allah witnesses that there is no deity except Him, and [so do] the angels and those of knowledge - [that He is] maintaining [creation] in justice. There is no deity except Him, the Exalted in Might, the Wise}* [Aal Imran 3:18]. Ash-Shawkani رَحِمَهُ ٱللَّهُ said: What is meant by those of knowledge here is the scholars of the Quran and Sunnah. And Allah عَزَّوَجَلَّ says: *{and say, "My Lord, increase me in knowledge"}* [Ta-Ha 20:114].

In the hadith it says: **«Whoever follows a path seeking knowledge thereby, Allah will make easy for him a path to Paradise».** Narrated by Muslim.

This series of textbooks comes to serve the community, with the aim of conveying Islamic knowledge by various methods and making it readily available to those who seek it. We hope that it will be another source of knowledge for academic programs and that it will be a support and help to those who want to acquire more Islamic knowledge and education, in an effort to achieve the main goal, which is to spread and instill sound Islamic knowledge on a sound academic foundation and in accordance with correct beliefs, based on the Book of Allah and the Sunnah of His Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ, in a modern and easily-understood style. We ask Allah عَزَّوَجَلَّ to grant us all beneficial knowledge, enable us to do righteous deeds, guide us and help us to be sincere in our efforts.

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The Zad
Academy Series

Fiqh

Islamic Jurisprudence

Level 4

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1

Buying and selling

There is hardly any Muslim who has no need of engaging in transactions, buying and selling. Hence anyone who has any business to do in the marketplace must learn the rulings on buying and selling. Many infractions only occur because people are unaware of the Islamic rulings on the matter. The caliphs made it mandatory for people to learn the rulings on buying and selling. In this regard, Islam brought a number of rulings and points of etiquette, in order to protect the public interest and prevent people from falling into ambiguity, gambling, riba or other haram transactions.

Definition of bay' (translated above as buying and selling):

In linguistic terms, the word bay' refers to taking something and giving something in return. It comes from the root baa', which refers to each of the two parties to a transaction stretching out his hand to the other.

In Islamic terminology, it refers to exchanging property or wealth, so each party gives something to the other for him to own it and possess it.

What is meant by maal (translated here as wealth or property) is anything that one may possess and acquire, whether it is an item or a benefit (such as a service or skill). Examples include gold, silver, cash, animals or plants. The definition also includes the benefits that one may acquire from a thing, such as riding [an animal], wearing [a garment] or residing in [a house].

On the basis of this definition, we may understand the following:

- A sale transaction takes place between the two parties between whom the exchange occurs.
- This exchange is done on the basis of wealth **or what comes under the same rulings, such as benefits.**
- With regard to that which is not wealth and does not come under the same rulings as wealth, it is not valid to sell or buy it.
- Once the exchange has taken place, the ruling [of possession] becomes permanent, meaning that each party permanently takes possession of the item or benefit that the deal was about.

Essential parts of the transaction:

- The format
- The two parties to the transaction
- The item that is the subject of the transaction

There are three essential parts of the transaction:

1. **The format,** which may take the form of words or actions. If it takes the form of words, it has two essential parts:

a. **The offer,** which is spoken by the seller, such as saying: I am selling this item.
b. **The acceptance,** which is spoken by the buyer, such as saying: I am buying it.

This happens a great deal in sales of significant value, such as sales of real estate, cars and so on.

What is meant by actions is a physical exchange, whereby the seller gives the item to the buyer, and the buyer gives the known price to the seller, without speaking. These actions of the two parties to the transaction constitute the offer and acceptance. **This happens a great deal in shops where everything has the same price, or where items have price stickers, price tags, and so on.**

2. There should be two parties to the transaction, the seller and the buyer.

3. The item that is the subject of the transaction, which is the thing concerning which the two parties reach an agreement regarding the price and the item.

The difference between the item that is the subject of the transaction and the place where the transaction is done:

The item that is the subject of the transaction is the thing concerning which the transaction is drawn up, such as a car, house, bread and so on.

The place where the transaction is done is the place in which agreement on the transaction was reached.

Ruling on buying and selling

Buying and selling is permissible according to the Quran and Sunnah, and scholarly consensus:

- Allah عَزَّوَجَلَّ says: *{But Allah has permitted trade}* [al-Baqarah 2:275].
- The Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«The two parties to a transaction have the option of cancelling so long as they have not parted. If they are sincere and open, their trade will be blessed for them, but if they conceal defects and tell lies, the blessing of their trade will be erased.»** Agreed upon.
- The Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ continued to buy and sell until Allah عَزَّوَجَلَّ took his soul in death.
- The scholars are agreed on that in general. Ibn Qudamah رَحِمَهُ ٱللَّهُ said: The Muslims are unanimously agreed that buying and selling are permissible, generally speaking.
- That is also dictated by common sense, because one person may need what another person possesses, and that person may not give it to him for nothing in return. Therefore there is no way to get it except through buying and selling. Thus permitting trade serves the interests of both parties and makes things easy for both of them.

Conditions of a sale transaction being valid:

In order for a sale transaction to be valid, there are seven conditions which must be met.

The first condition is mutual consent between the seller and buyer. A sale made under duress is not valid.

Allah عَزَّوَجَلَّ says: *{O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent}* [an-Nisa 4:29].

The Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«A sale can only be valid if it is done with mutual consent.»**

Narrated by Ibn Majah; classed as sahih by al-Albani.

But if someone is forced to sell for a legitimate reason, then the sale is valid, such as if a judge forces someone to sell his house in order to pay off a debt that is now due and his creditors are demanding payment.

The second condition is that both the seller and buyer should be qualified to dispose of their wealth. The one who is qualified to dispose of his wealth is the one who has the following four characteristics: being free, being an adult, being of sound mind and being mature in thinking.

It is not valid for a minor to dispose of his wealth without the permission of his guardian, but if his guardian gives him permission, then his transaction is valid.

Exempted from that are transactions of little value, such as the things that minors customarily buy and sell. There is nothing wrong with that.

The third condition is that the item sold should be something that is permissible to use.

- It is not permissible to sell that which is of no benefit, such as **insects** that are of no benefit. If it is permissible to benefit from them in some way, then it is permissible to buy and sell them.
- It is not permissible to sell that which is haram to make use of, **such as alcohol, pork, statues, musical instruments, music recordings, tobacco, crosses and so on**.
- It is not permissible to sell that in which there is no benefit; that is not permissible except in cases when one is compelled to sell it, such as **dead meat** [that is, meat that was not slaughtered in accordance with Islamic teachings].

That is because the Prophet ﷺ said: **«Allah and His Messenger have forbidden the sale of alcohol, dead meat, pork and idols.»** It was said to him: O Messenger of Allah, what do you think about the fat of dead meat, for it is used for caulking ships and in the tanning of animal skins, and people use it in their lamps? He said: **«No, it is haram.»** Then the Messenger of Allah ﷺ said at that point: **«May Allah curse the Jews! When Allah forbade animal fat to them, they collected it then they sold it, and consumed its price.»** Agreed upon.

And because the Prophet ﷺ said: "When Allah عَزَّوَجَلَّ forbids eating a thing, He also forbids its price." Narrated by Ahmad; classed as sahih by al-Albani.

The fourth condition is that the item sold should be in the possession of the seller, or he should have permission to sell it at the time of drawing up the contract, because the Prophet ﷺ said: **«Do not sell that which is not in your possession.»** Narrated by Abu Dawud and at-Tirmidhi; classed as sahih by al-Albani.

What is the ruling on selling revealing clothing, underwear, perfume and make-up to women, when some of them may use these things in haram ways?

There is nothing wrong with that, because the basic principle is that all transactions are permissible, except in cases where there is proof that it is forbidden. Using these things in haram ways is something that is not usually done, and it is not appropriate to ask the purchaser whether he or she is going to use the item in permissible ways.

If someone sells something that is not in his possession or that he does not have permission to sell, in that case the transaction is dependent on the consent of the owner. If the owner gives his consent, then the transaction may go ahead, otherwise it is cancelled.

The fifth condition is that the item being sold should be known, by seeing it, or through a description that is sufficient to rule out any ambiguity, because the Messenger of Allah ﷺ forbade transactions in which there is ambiguity. Narrated by Muslim.

- **The sixth** condition is that the price should be known, which is done by stating the price of the item being sold. That is because not knowing the price comes under the heading of ambiguity, and ambiguity is not allowed.
- **The seventh** condition is that the item should be something that can be handed over or delivered. It is not valid to sell a runaway camel or a bird in the air, and the like, because that is more akin to something that does not exist. This includes sales based on ambiguity, which are not allowed, because the purchaser could pay the price and gain nothing.

Transactions that are not allowed:

In principle, sales are permissible, because Allah عَزَّوَجَلَّ says: *{But Allah has permitted trade}* [al-Baqarah 2:275]. But the wise Lawgiver has forbidden some kinds of transactions for sound reasons, such as the following:

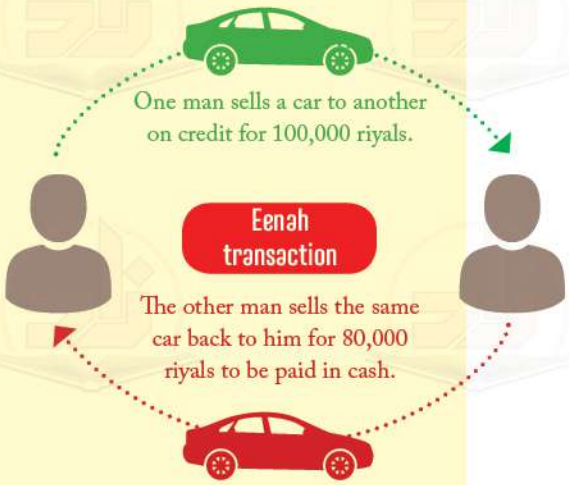
- **Buying and selling after the second call for Jumuah prayer, for one for whom Jumuah prayer is obligatory, because Allah, عَزَّوَجَلَّ says:** *{O you who have believed, when [the adhan] is called for the prayer on the day of Jumuah [Friday], then proceed to the remembrance of Allah and leave trade}* [al-Jumuah 62:9].
- **Selling things to those who will use them for haram purposes,** such as selling weapons at the time of fitnah and civil war, or selling grapes to someone who will use them to make wine, because Allah عَزَّوَجَلَّ says: *{And cooperate in righteousness and piety, but do not cooperate in sin and transgression}* [al-Ma'idah 5:2].
- **Undercutting one's Muslim brother or outbidding him,** because the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«Do not undercut [or outbid] one another.»** Agreed upon.

The situation in which that is forbidden is only after the deal has been concluded and the transaction has been completed, such as if the two parties to the transaction have agreed on the price of an item, then someone else comes along and says to the buyer: I will sell you a similar item for less than this price. In the case of buying, it refers to when another purchaser comes to the seller and says: I will give you more for this item.

But if that happens before the deal is completed, then there is nothing wrong with a buyer offering more or a seller reducing the price, as happens in stores.

Eenah transactions, because the Prophet ﷺ said: **«When you enter into eenah transactions, take hold of the tails of cattle and are content with farming, and you forsake jihad, Allah will cause humiliation to prevail over you and will not withdraw it until you return to your religion.»** Narrated by Abu Dawud; classed as sahih by al-Albani.

One of the forms that the eenah transaction may take is when one person sells an item to another, for a price to be paid in one year's time, for example, so the purchaser is now in debt to the seller, then the first seller buys the same item back for a lower price to be paid immediately. Thus the purchaser still owes something to the seller that is to be paid later, but he receives a smaller amount of cash from him. Hence it is as if he borrowed that amount of cash in return for a greater amount than what he has borrowed, which is to be paid later, and the item is just a means to an end and a trick; the purchaser was not interested in the item itself in the first place. Thus eenah is a trick to circumvent the prohibition on riba-based loans.

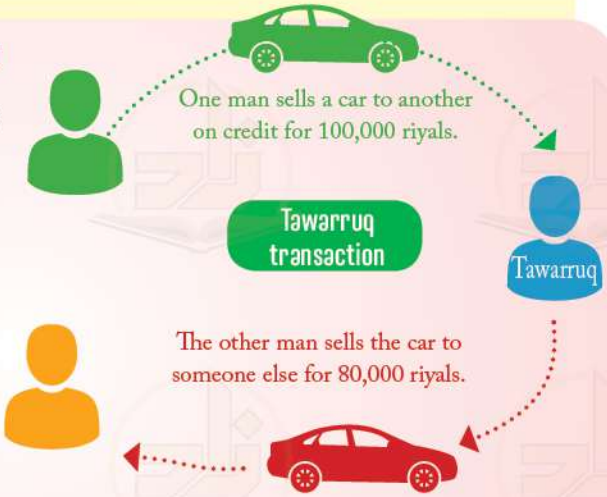


For example: Zayd buys Amr's watch from him for 1,000 riyals, to be paid in six months' time and he takes possession of the watch. Then Zayd sells it back to Amr for 800 riyals, to be paid in cash on the spot. Thus Zayd gets 800 riyals cash in hand, but he owes Amr 1,000 riyals. The sale of the watch was just a trick to circumvent the rulings on riba-based loans.

One of the permissible transactions is called tawarruq; it does not come under the heading of eenah transactions, which are prohibited.

How tawarruq is done: One person buys an item from another, to be paid for later, then he sells it to a third person for cash, with the aim of acquiring cash, without any involvement of the first seller.

This is permissible in the case of need, if one cannot find anyone to give a goodly loan.



The word tawarruq is derived from wariq, which means silver, because the purchaser only wanted to buy it so that he could sell it and turn it into cash.

Selling crops before it is known whether they are good. This is prohibited because of the hadith of Ibn Umar رَضِيَ اللَّهُ عَنْهُمَا, according to which the Messenger of Allah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ forbade selling crops before it is known whether they are good. He forbade the seller and the purchaser. Agreed upon.

It is known that the crop is good when the fruits of the date palm turn red or yellow. In the case of grains, it is when they dry out and become solid, and so on with other crops.

Artificially inflating prices. This is when someone offers more for an item that is for sale, when he does not intend to buy it; rather he does that to deceive someone else, make him interested in it and increase its price. The Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ forbade artificially inflating prices. Agreed upon

Activities

1. **Give a definition of bay' (buying and selling) in both linguistic terms and in Islamic terminology, and what may be understood from the definition.**
2. **The scholars differed regarding sales in the form of silent physical actions. State the view that is most likely to be correct, with evidence, using other sources.**
3. **Allah عَزَّ وَجَلَّ says:** *{But Allah has permitted trade and has forbidden interest [riba]}* [al-Baqarah 2:275]. **Why did Allah mention trade and riba [interest] together in this verse? Use your reasoning.**
4. **One of the conditions of buying and selling is that "the item sold should be something that is permissible to use and benefit from." Explain this phrase.**
5. **What is the eenah transaction? Why is it prohibited?**
6. **Discuss the difference of opinion regarding the tawarruq transaction, and explain which view is most likely to be correct, using other sources.**
7. **Why is it prohibited to sell crops before it is known whether they are good? Use other sources.**

The option to cancel the transaction:

Types of options to cancel a transaction

- Option to cancel before parting
- Option to cancel stipulated as a condition
- Option to cancel because of a defect in the item
- Option to cancel because of an unfair price
- Option to cancel when deceit has occurred

The option to cancel the transaction means that one has the option of either going ahead with the transaction or cancelling it, whichever is better for him.

Categories of options to cancel the transaction. There are several categories of options, the most important of which are:

Option to cancel before parting: what is meant by the option to cancel before parting is: each of the two parties to the transaction has the option to cancel it so long as they are still in the place where they drew up the deal. That is because the Messenger of Allah ﷺ said: **«The two parties to a transaction have the option to cancel it so long as they have not yet parted.»** Agreed upon.

Option to cancel stipulated as a condition: what is meant is that the two parties stipulate this condition, to which they both agree and give consent; if they both wish, they may go ahead with the transaction, and if they both wish, they may cancel it.

An example of that is saying: I will buy the car from you, provided that I have the option to cancel within two days, then if I like it I will keep it, otherwise I will return it. In this case, it is obligatory for both parties to adhere to that, because the Prophet ﷺ said: **«The Muslims are bound by their conditions.»** Narrated by Abu Dawud; classed as sahih by al-Albani.

Option to cancel because of a defect in the item: what is meant is that if it turns out that the item sold is defective in such a way that would detract from its value, then **the purchaser has the right to cancel the transaction, return the item and get his money back, or he may keep it and take the difference in value due to the defect, or he may keep it without any kind of compensation,** because in principle it is assumed that what the deal is about – namely the price and the item – is sound, then if it turns out that there is something wrong with either of them, the one who is adversely affected has the right to cancel the deal.

****The right to cancel the transaction in this situation is implied in the transaction, even if the two parties do not discuss it.**

What constitutes a defect that allows annulment of the transaction is that which would cause the price of the item to be lowered according to traders and people with experience.

Option to cancel because of an unfair price: this refers to when the purchaser buys an item at an unfair price, far beyond what is customarily acceptable, which is haram. For example, if a person buys an item for double its value or more, then he has the choice between keeping it or cancelling the deal. A deal may also be unfair to the seller sometimes.

Option to cancel when deceit has occurred: this refers to when the seller presents an item in an attractive way, giving a wrong impression about it, such as putting a world-famous trademark on the item when it is not made by the company that owns that trademark, or changing the features of a car to make it look new. Such actions are haram and the buyer has the option of keeping it, or cancelling the deal and getting his money back.

One party letting the other off the transaction:

A transaction is a binding contract; once it is concluded, the sale must go ahead. However, it is encouraged for the Muslim to help his brother to correct his mistake, if he regrets the purchase. In that case he may agree to cancel the transaction, and there is great virtue in doing that, because the Messenger of Allah ﷺ said: **«Whoever lets a Muslim off a business deal [after it has been concluded], Allah will help him on the Day of Resurrection.»** Narrated by Abu Dawud and Ibn Majah; classed as sahih by al-Albani.

Having a transaction witnessed:

It is recommended to have transactions witnessed, because Allah عَزَّوَجَلَّ says: *{And take witnesses when you conclude a contract}* [al-Baqarah 2:282]. This allows for greater security and guarantees the rights of both parties.

Etiquette of buying and selling:

The seller should observe some etiquette that is enjoined in Islamic teachings, which is as follows:

- **Being easy-going when buying** and selling. The Prophet ﷺ said: **«May Allah have mercy on a man who is easy-going when he sells and when he buys, when he pays off his debt or asks for his debt to be paid off.»** Narrated by al-Bukhari.
- **Being truthful in his dealings.** The Prophet ﷺ said: **«The honest, truthful merchant will be with the prophets, the strong and true in faith (siddeeqs) and the martyrs.»** Narrated and classed as hasan by at-Tirmidhi.
- **Not swearing oaths even if they are true.** Allah عَزَّوَجَلَّ says: *{But guard your oaths}* [al-Ma'idah 5:89]. And the Prophet ﷺ said: **«An oath may help to sell the item but will erase the blessing.»** Agreed upon.

Selling by instalments:

Selling by instalments is a transaction regarding which is very important to know the rulings, because it is a widespread practice among the Muslims in their business dealings. The most important of those rulings are as follows:

- It is permissible to sell or buy an item for a price to be paid at a known future time that is higher than the price that is paid if the item is bought with cash. This is according to the majority of scholars. Shaykh Ibn Baz رَحِمَهُ ٱللَّهُ said: Some scholars had an odd view and did not allow increasing the price when payment is deferred, because they thought that this is riba, but this is a view for which there is no basis.

They quoted the following evidence for it being permissible to sell by instalments:

- The verse in which Allah عَزَّوَجَلَّ says: *{But Allah has permitted trade}* [al-Baqarah 2:275]. This verse applies to all transactions, except those concerning which there is evidence that they are prohibited. Everything that comes under the heading of trade or a transaction is permissible, and it is not appropriate to confuse sales with loans or riba-based transactions.
- The Muslims' trading was based on the view that it is permissible to increase the price in return for deferring payment, without anyone objecting to that.
- Selling by instalments is beneficial to both the seller and the buyer. The merchant agrees to this delay in payment so that he can benefit from the increased price, and the purchaser agrees to pay more in return for this respite, and because he is unable to pay the price in cash. Thus they both benefit from this transaction, without committing any infraction of Islamic teachings.

Issues having to do with buying by instalments:

- Ownership is transferred in full to the purchaser, even if some of the price is still outstanding. So he has the authority to sell the item to someone else, then pay off what he still owes.
- If the purchaser delays paying what he owes and does not pay it at the time agreed upon, it is not permissible to oblige him to pay more than what he already owes, whether that was stipulated in the original contract or is imposed without prior stipulation, because that is riba, which is haram.

Activities

1. What is meant by the option to cancel a transaction? Explain the wisdom behind allowing this condition in transactions. How do the two parties benefit from having this option?

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2. Someone bought a car from another person, then he realized that it is defective. Can he return it? Discuss this issue.

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3. What is meant by allowing the other party to cancel the deal? What is the virtue of doing that?

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4. Some scholars are of the view that it is forbidden to sell by instalments. State who holds this view, and note the most important evidence that they give for it.

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2

Renting and hiring (ijarah)

Renting and hiring (ijarah)

Definition of ijarah:

In linguistic terms, ijarah refers to payment, which is given in return for doing something. This is seen in the verses in which Allah عَزَّوَجَلَّ says: *{If you wished, you could have taken for it a payment [ajran]}* [al-Kahf 18:77] and *{then give them their payment [ujoorahunna]}* [at-Talaq 65:6].

In Islamic terminology, it refers to a contract regarding a known benefit or service, or a known action, at a known time, in return for a known payment.

This is a type of transaction or trade, because in reality it is selling a service or benefit.

The difference between a sale transaction (bay') and a transaction of renting or hiring (ijarah):

- A sale transaction has to do with an item, whereas a transaction of renting or hiring has to do with a benefit or service.
- In a sale transaction, ownership of the item is transferred to the buyer, and he becomes responsible for it. In a transaction of renting or hiring, the item remains the property of the one who rents it out, and he remains responsible for it.

Essential parts of an ijarah transaction:

The ijarah (hiring, rental) transaction has four essential parts:

1. **The wording or format,** which is the offer and acceptance. In most cases, this is verbal.

   However, it may take the form of actions, **giving** and taking, such as if some piece of equipment or a machine is offered for hire for a fixed price, or hiring out bicycles, cars and the like.

2. **The two parties to the contract,** namely the one who rents out something (the lessor) and the one who rents or hires it (the lessee).

3. **The subject of the contract,** which is the asset. The asset may be benefitting from the use of an item or benefitting from a service.

4. **The payment or fee,** which is what the lessee must pay in return for the benefit that he enjoys or the work that is done for him.

Ruling on ijarah (renting or hiring):

Ijarah is permissible according to the Quran and Sunnah, and scholarly consensus.

Allah عَزَّوَجَلَّ says: *{then give them their payment [ujoorahunna]}* [at-Talaq 65:6] and *{If you wished, you could have taken for it a payment [ajran]}* [al-Kahf 18:77].

And Aisha رَضِيَ اللَّهُ عَنْهَا said: The Messenger of Allah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ and Abu Bakr **hired** a man from [the tribe of] Banu'd-Dayl as an experienced guide. Narrated by al-Bukhari.

The word translated **here as "an experienced guide" means one who was skilled and had knowledge of hidden routes in the desert.**

In terms of scholarly consensus, Ibn Qudamah said: The scholars in every era and place are unanimously agreed that ijarah is permissible.

The wisdom behind the permissibility of ijarah:

Ijarah is a type of contract that serves many interests, because not everyone is able to do everything himself, so he may need to hire a worker. Similarly, no one is able to buy everything, so he may need to rent an animal or a house and the like. Hence Allah has permitted ijarah (hiring or renting) so as to make things easier for people and so that they can meet their needs.

Conditions of the ijarah contract:

1. Mutual consent between the two parties to the contract.
2. They should be people who are qualified to dispose of their wealth.
3. The benefit and the fee should be known, so that there will be no ambiguity.

It is essential that the benefit or service should be something that is permissible. It is not permissible to rent space for haram purposes such as singing, dancing, teaching magic and astrology, or teaching music; or to hire someone to carry haram goods such as alcohol, tobacco and the like.

Everything that is permissible to make use of and benefit from, is permissible to rent it out for that usage, such as renting out real estate, animals, clothing and the like.

The same applies to hiring people to do permissible work, such as cleaning, maintenance, construction and so on.

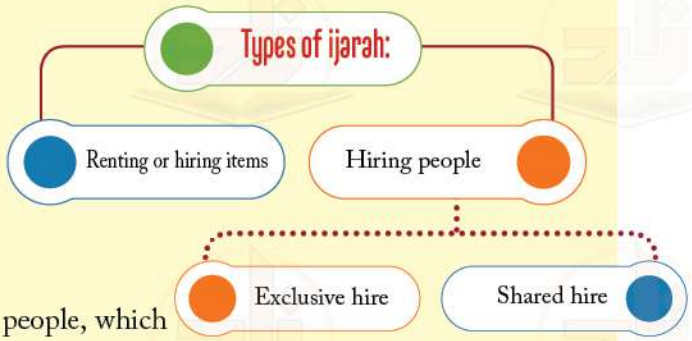
4. The benefit should be something that is permissible.

5. The item rented out should belong to the one who is renting it out, or he should have permission to dispose of this benefit.

6. The rental period should be known, because not knowing the duration of the rental amounts to ambiguity, and could lead to disputes.

It is not permissible to hire people to do haram things, such as hiring singers, dancers, drummers, or music groups; or to rent out rooms or houses to practitioners of witchcraft and charlatans; or to rent out musical instruments, smoking paraphernalia, and so on, because that comes under the heading of cooperating in sin and transgression.

Types of ijarah



1. **The first type** of ijarah is renting or hiring items. This refers to renting the use of a specific item, such as renting out a car, house, farm or tools, and so on.

2. **The second type** of ijarah is hiring people, which means hiring someone to do a specific task, such as hiring someone to convey you in his car to a specific place, or hiring someone to do plumbing repairs, or to paint a building, or paying a dentist to extract a tooth, or paying an engineer to draw up plans, and so on.

Hiring people is of two types: exclusive hire and shared hire.

The one who is hired exclusively is someone who works for a particular individual for a specific period of time, such as employees in government departments and private companies, who work for a set number of hours, as well as servants in houses and drivers, those who are hired as security guards, and the like.

It is not permissible for such a person to work for anyone else during the time that has been agreed upon.

- He is entitled to his wages when he makes himself available to the one who hired him during the time agreed upon, and it does not matter whether his boss gives him work or not during that period; he is entitled to his wages in full, in return for his time.

Shared hire refers to someone who works for more than one person, meaning that he works for the public, and his time is not limited to one specific person. Rather he is committed to completing the work. This refers to people such as mechanics, carpenters, tailors and barbers in their shops, as well as drivers, doctors in their clinics, general contractors, and the like.

In this case, the worker does not receive his payment until he has completed the job, whether it takes a long time or not. Once the work is complete, the worker is entitled to his wages, but if the work is not complete, he is not entitled to any payment, and he cannot take payment for preliminary work when the work has not been completed.

If someone rents a house to use as a dwelling, it is not permissible for him to use it for any other purpose except with the consent of the landlord.

The difference between the one who is hired exclusively and the one who does work for several people is that the one who is hired exclusively is entitled to his wages for making himself available during the hours of work, whereas the one who does work for several people is entitled to his wages upon completion of the work.

An employee in an office is hired exclusively; the mechanic in his workshop works for many people.

The one who hires someone must give the worker his wages in full when he completes his work, because the Prophet ﷺ said: **«Give the worker his wages before his sweat dries.»** Narrated by Ibn Majah; classed as sahih by al-Albani.

It was narrated from Abu Hurayrah رضي الله عنه that the Prophet ﷺ said: **«Allah said: 'There are three whose opponent I will be on the Day of Resurrection.'»** One of them is: a man who hired a worker and got the job done in full, but did not give him his wages.

Narrated by al-Bukhari.

It is not permissible for a woman to seek employment without the permission of her husband, such as working in an office, as a teacher and the like.

Activities

1. The ijarah contract is a kind of business transaction. Explain that, based on your understanding.

.....

2. What do the ijarah contract and the bay' (sales) contract have in common? In what ways do they differ ?

.....

3. It is known that in the ijarah contract, the one who rents the item owns the benefits thereof. Does he have the right to sell it? Use other sources.

.....

4. A man hired a singer for a wedding party. What is the ruling on paying him a fee? Quote the words of the scholars concerning this matter.

.....

5. Draw a table explaining the differences between one who is hired exclusively and one who does work for several people.

.....

6. What type of ijarah applies to the following jobs: the barber in his shop – the mechanic in his workshop – the military officer – the doctor in the hospital – the teacher in the school – the servant in a house?

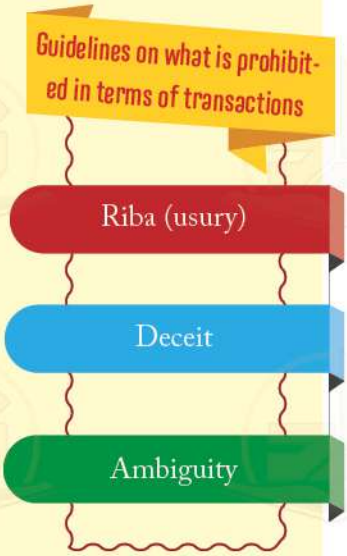
.....

3

Guidelines on what is prohibited in terms of transactions

Guidelines on what is prohibited in terms of transactions

There are a number of guidelines on what is prohibited in terms of transactions and what financial transactions are not permitted according to Islamic teachings. The following are the most important of them:



1. Riba (usury):

The danger posed by riba is immense. Allah عَزَّوَجَلَّ does not issue a warning of war except in the case of the one who deals in riba. He عَزَّوَجَلَّ says: *{O you who have believed, fear Allah and give up what remains [due to you] of interest [riba], if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger}* [al-Baqarah 2:278-279].

But it is not possible to avoid it except by knowing the rulings on it, in order to protect one's religious commitment and save oneself from the punishment of Allah عَزَّوَجَلَّ.

Definition of riba:

In linguistic terms, riba means increase. An example of that is the verse in which Allah عَزَّوَجَلَّ says: *{And of His signs is that you see the earth stilled, but when We send down upon it rain, it quivers and grows [rabat]}* [Fussilat 41:39].

In Islamic terminology, riba refers to an increase in specific things. It was said that it refers to extra money or wealth with nothing in return, when exchanging wealth for wealth.

Ruling on riba: riba is haram according to the Quran and Sunnah, and scholarly consensus.

Allah عَزَّوَجَلَّ says: *{…But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah . But whoever returns to [dealing in interest or usury (riba)] - those are the companions of the Fire; they will abide eternally therein. Allah destroys interest [riba] and gives increase for charities. And Allah does not like every sinning disbeliever. Indeed, those who believe and do righteous deeds and establish prayer and give zakah will have their reward with their Lord, and there will be no fear concerning them, nor will they grieve. O you who have believed, fear Allah and give up what remains [due to you] of interest [riba], if you should be believers. And if you do not, then be informed of a war [against you] from Allah and His Messenger. But if you repent, you may have your principal - [thus] you do no wrong, nor are you wronged}* [al-Baqarah 2:275-279].

The Messenger of Allah ﷺ said: **«Avoid the seven sins that doom a person to Hell.»** We said: What are they, O Messenger of Allah? He said: **«Associating others with Allah [shirk]; witchcraft; killing a soul whom Allah has forbidden us to kill, except in cases dictated by Islamic law; consuming riba; consuming orphans' wealth; fleeing from the battlefield; and slandering chaste, innocent women.»** Agreed upon.

It was narrated from Jabir رضي الله عنه that the Messenger of Allah ﷺ cursed the one who consumes riba and the one who pays it, the two who witness it and the one who writes it down, and he said: **«They are all the same.»** Narrated by Muslim.

With regard to scholarly consensus, Ibn Qudamah said: The ummah is unanimously agreed that riba is haram.

Al-Mawardi said: Riba has never been permitted in any divinely-revealed system of law, because Allah عز وجل says: *{And [for] their taking of usury [riba] while they had been forbidden from it}* [an-Nisa 4:161].

The wisdom behind the prohibition on riba:

The scholars have mentioned many reasons for the prohibition on riba, including the following:

- It harms the poor and needy, by multiplying the debts that they owe when they are unable to pay them.
- It leads to a collapse of morals because people no longer help one another or show compassion to one another. Thus it puts an end to kindness between Muslims, and leads to there being no interest-free loans (goodly loans).
- It makes the one who deals in riba get used to being lazy and apathetic, and makes him unwilling to do permissible, beneficial work and earn a living.
- As a result of the above, other ways of earning a living are undermined, such as industries and trades, because the one who deals in riba makes a profit without doing any work, so why should he strive or work hard?!
- It involves devouring people's wealth unlawfully, because people's interactions for the purpose of earning a living are based on both parties benefitting, as one will have some work done for him and the other will receive payment for it. But in the case of riba there is no work and no payment.

- Riba leads to increased prices of goods and services, because when those who run productive projects borrow money to finance their projects, they have to raise the price of their products to cover the higher cost of production due to riba.

- Riba leads to a reduction of spending power, because according to economic theories, the more money there is in circulation as a result of loans given out by banks and other financial institutions, the more that leads to weakening of the purchasing power of the local currency, because the money that is given out in loans is not accompanied by productive projects or goods. This is in contrast to legitimate ways of making a profit, which results from the connection between wealth and work. According to this system, currency is connected to the products and services that are essential to society.

What the West says about the prohibition on riba and adopting the Islamic financial system

The French Senate has called for including the Islamic financial system in the financial system of France. They said: "The financial system that is based on guidelines derived from Islamic law is appropriate for everyone, whether they are Muslims or non-Muslims."

In Challenges magazine, it says: "I think that we have a greater need during this crisis to read the Quran instead of the Bible, in order to understand what is happening to us and our financial system, because if those who are in charge of our financial system tried to respect the teachings and guidelines that are mentioned in the Quran and tried to implement them, then we would not have gone through these calamities and crises, and we would not have ended up in this miserable situation, because money by itself does not generate money."

A global economist said: "Money does not produce money." Then he followed that by saying: "Any credit or loan should be balanced with defined assets. Banning the sale of money for money or wealth for wealth is the ideal solution to the economic crisis throughout the world."

This is what Islam calls riba, and the Quran put an end to it when it said: *{and [Allah] has forbidden interest [riba]}* [al-Baqarah 2:275].

Laskin wrote an article entitled, "Is Wall Street now ready to embrace the principles of Islamic Sharia?" in which he spoke of the risks that threaten capitalism, and gave a list of suggestions for solving the problem, foremost among which is the application of Islamic Sharia.

The chief editor of the French newspaper Le Journal de Finance demanded, as a matter of necessity, the application of Islamic Sharia in the field of finance and economics, so as to put an end to the crisis that has shaken world markets.

Interest on bank accounts is riba:

From a fiqhi point of view, money deposited in a bank account is regarded as a loan that is given by the customer to the bank, and the interest paid by the bank is something extra to this loan. This is the essence of riba. Hence the scholars are unanimously agreed that this interest that is paid by the bank is haram.

If it is said that the bank does not borrow anything from the customer, the response to that is: the bank is responsible for and guarantees the money in the customer's account in all cases, but wealth acquired for safekeeping with the permission of the owner is not guaranteed in all situations, except in the case of a loan. So for the bank to stipulate that it is responsible and liable for the money in the account in all situations turns the transaction into a loan, whereas if the relationship between them (the bank and the customer) was a partnership or profit-sharing deal, as prescribed in Islamic teachings, then the bank and the customer would share both gains and losses. But this is not applicable at all in the case of a bank account.

Types of riba:

Riba is of two types:

The first type: Riba on debts

This refers to riba in debt contracts such as loans and purchases on credit.

This is of two kinds:

1 Increase of the debt if it is not paid when it becomes due:

How that is done: if one person owes a debt to another – whether it is a loan or a sale on credit or something else – then when it becomes due, if the debtor does not have money to pay the debt, the creditor gives him a new deadline in return for an increase in the amount owed.

An example of that is: One person buys a car from another for fifty thousand riyals, to be paid in three years' time. When the time to pay comes, the buyer is not able to pay, so the seller says to him: I will give you another year, for an increase in the amount owed. So now the amount owed becomes fifty-five thousand riyals.

This increase is the worst type of riba, and the most emphatically prohibited.

It is one of the most well-known forms of the riba of the Jahiliyyah. Qatadah said: The riba of the Jahiliyyah involved a man selling an item to be paid for at a particular time, then if that time came and the buyer could not afford to pay his debt, he would increase the debt and extend the time for payment.

2 **Increase stipulated in the loan contract from the outset:**

What this means is that one person lends a sum of money to another, and the lender stipulates that the borrower must pay it back with something extra.

This type of riba is called riba on loans, because the extra amount is stipulated from the outset in the loan contract, and not at the time of paying back the loan.

The second type: riba in business transactions:

This is riba when exchanging items and trading.

It is of two kinds:

1 **Riba al-Fadl** [unequal exchange of wealth of the same commodity]. This occurs when trading something that is vulnerable to riba for something of the same commodity, with an increase in the amount.

Further discussion:

Wealth that is vulnerable to riba is wealth that may be subject to riba when trading in it. There are two categories:

- **1: Currency,** namely gold and silver.

  That includes that which is similar to gold and silver, such as paper money.

- **2: Staple foods that can be stored,** which are the four types mentioned in the texts, namely wheat, dates, barley and salt.

Added to that are other, similar staple foods such as rice, lentils, spices and so on.

"Something of the same commodity" means the same type of wealth that is vulnerable to riba. Gold of all kinds is one commodity; dates of all kinds are one commodity; rice of all kinds is one commodity; lentils of all kinds are one commodity; Saudi riyals of all denominations are one commodity; Egyptian pounds of all denominations are one commodity – and so on. "with an increase in the amount" means when the amounts traded are not equal.

The evidence for the prohibition is the hadith of Ubadah ibn as-Samit رضي الله عنه, according to which the Prophet صلى الله عليه وسلم said: **«Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, same for same, hand to hand. But if these commodities are different, then sell as you like, as long as it is hand to hand.»** Narrated by Muslim.

According to this hadith and other texts concerning this topic, the scenarios of trading are three:

- **The first scenario: Trading one thing for something else of the same commodity, such as gold for gold, silver for silver, dollars for dollars, riyals for riyals, wheat for wheat, and rice for rice. Two conditions are stipulated in this case:**
  1. That the exchange take place on the spot, in the meeting in which the deal is made.
  2. That the commodities traded be equal in quantity.

It is permissible to sell one hundred grams of gold for one hundred grams of gold on condition that the exchange take place on the spot. It is haram to sell one hundred grams of silver for one hundred and fifty grams of silver, even if the exchange takes place on the spot.

In order to understand issues having to do with riba connected to trading or buying and selling, it is essential to understand two things:

The commodity and the reason:

With regard to commodity: gold is a commodity, silver is a commodity, barley is a commodity and wheat is a commodity.

With regard to the reason:

The reason in the case of gold and silver **is the fact that they are the things by which items are valued and priced (like money or currency),** which is the most specific quality to which the ruling on riba could be connected. So any other thing that is made so that goods will be priced according to it is subject to the same rulings with regard to riba, such as paper money and coins. The currency of a particular country is regarded as being of one commodity, so riyals are one commodity; pounds are a commodity; dollars are a commodity – and so on.

The reason in the case of the four foods mentioned **is the fact that they are staple foods and can be stored, because that is the most specific quality of the four foods.** Other similar foods are also subject to the same rulings with regard to riba, such as rice, corn, foul (beans), lentils and all other grains, and other things that are like salt, such as cumin, pepper and so on. A "staple food" **is that which is essential to a human's physical well-being and survival, not something that he eats for pleasure.** "Can be stored" **means that it can be kept for long periods without spoiling under normal, circumstances. This does not include foods that are stored in fridges.**

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- **The second scenario:** if the commodities are different but the reason is the same [that is, they belong to the same category], it is permissible to trade different amounts, but it is stipulated that the exchange be made on the spot, in the meeting in which the deal is drawn up. Examples include trading dates for barley, wheat for salt, and gold for silver.

So it is permissible to trade one saa' of dates for two saa's of barley, on condition that the exchange be made on the spot. It is permissible to trade one hundred dollars for three hundred riyals, on condition that the exchange be made on the spot. It is permissible to trade different amounts but it is haram to delay the exchange.

- **The third scenario:** if the reasons differ [that is, they do not belong to the same category] – and hence the commodities differ. In that case, both are permissible, the difference in amount and the delay in exchange or payment. Examples include trading gold for wheat, and silver for barley. It may be noted that the reason is different, as one is something according to which things are valued, and the other is a type of staple food.

So it is permissible to sell one hundred saa's of wheat for two hundred riyals, even if the exchange or delivery is delayed.

Summary of trading in things that are vulnerable to riba

- If they are of the same commodity, the exchange must be of the same amount, on the spot.
- If the commodities are different but the reason is the same [that is, they belong to the same category], then the exchange must take place on the spot but the amounts may vary.
- If the reasons differ [that is, they do not belong to the same category] or there is no reason [to regard them as being vulnerable to riba], or the reason applies to one of them and not the other, it is permissible to trade different amounts and to delay the exchange or delivery.

If the goods are not vulnerable to riba, then it is permissible for the amounts to differ and it is permissible to delay the exchange or delivery. So it is permissible to sell one ton of iron for two tons of iron, even if the exchange or delivery is delayed, and it is permissible to trade one car for two cars, or one garment for two garments, or to trade oranges for oranges or apples for apples of different amounts and to delay the exchange or delivery.

An item that is vulnerable to riba can be traded for an item that is not vulnerable to riba, even if they differ in quality and the exchange or delivery is delayed, such as trading wheat for iron, or barley for garments, because there is no reason for riba in one of them.

** The things that are vulnerable to riba are: gold, silver, wheat, barley, dates and salt

Cash and all currencies come under the same rulings as gold and silver for the reason that they are things by which items are valued and priced.

Grains and all staple foods that can be stored come under the same ruling as foodstuffs that are vulnerable to riba for the reason that they are staple foods and can be stored.

2 The second type: Riba an-Nasee'ah

This refers to riba that results from a delay in exchange or payment. It comes from the word nasa', which means delay.

Definition: this refers to selling one type of wealth that is vulnerable to riba for another type of wealth that is vulnerable to riba, both of which have the same reason for being regarded as vulnerable to riba [that is, they are of the same category], but the exchange does not take place on the spot.

They have the same **reason** for being regarded as vulnerable to riba, such as if they are both things by which items are valued and priced, or they are both staple foods that can be stored, whether they are the same commodity or not.

What is meant by the exchange is handing over of the goods being traded in the same meeting in which the deal is drawn up.

Examples of that [riba an-nasee'ah] include the following:

1. Trading a saa' of dates for a saa' of wheat, without the exchange taking place on the spot.
2. Exchanging one thousand Saudi riyals for two thousand Egyptian pounds, without the exchange taking place on the spot.

Evidence for this prohibition:

The Messenger of Allah ﷺ said: **«Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, salt for salt, like for like, same for same, hand to hand. But if these commodities are different, then sell as you like, as long as it is hand to hand.»** Narrated by Muslim.

And the Messenger of Allah ﷺ said regarding the sale of silver for silver with a delay in handing over one of the two: **«Whatever is hand-to-hand there is nothing wrong with it, but if there is a delay in handing it over, then it is riba.»** Narrated by Muslim.

These hadiths indicate that it is obligatory for the exchange to take place on the spot when trading wealth that is vulnerable to riba, if the goods traded are of the same category of wealth that is vulnerable to riba.

Based on that, if the goods that are vulnerable to riba are of different categories, such as selling foodstuff for gold, or wheat for silver, and the like, then there is nothing wrong with delay in delivery, because although they are both vulnerable to riba, they are of different categories, as one is something by which items are valued and priced and the other is foodstuff.

Common mistakes in buying and selling gold and silver:

- It is not permissible to sell used gold for new gold and pay the difference.

The correct way is to sell the used gold, then take the money for it, then buy new gold.

- It is not permissible to buy and sell silver on credit or by instalments, because this comes under the heading of riba an-nasee'ah.
- It is not permissible to return gold after buying it and take something of lower value plus the difference in the price, because that is selling gold for gold plus something extra.

The correct way is to sell the gold and take the money for it, then buy the other gold.

- It is not permissible to reserve gold by paying some of the price and delaying handover of the gold [until the payment is made in full], because this comes under the heading of riba an-nasee'ah.

The way it must be done is to pay the price of the gold in full, then take the gold that is mentioned in the deal, because the Prophet ﷺ said: **«But if these commodities are different, then sell as you like, as long as it is hand to hand.»** Narrated by Muslim.

Buying goods that are vulnerable to riba with debit cards:

If someone wants to buy an item concerning which it is stipulated that the exchange be done on the spot, such as gold and silver, with a debit card, there is nothing wrong with using the debit card to do that, because the money is withdrawn directly from the purchaser's current account and is transferred directly to the seller's account. In fact this is an exchange on the spot as prescribed in Islamic teachings, because it enables the seller to dispose of the price of the item as soon as the transfer is completed.

For Your Information

Definition of exchange (sarf):

In linguistic terms, sarf (translated here as exchange) refers to changing something from the way it is.

In Islamic terminology, sarf refers to selling one currency for another, whether they are of the same type or of different types.

What is meant by currency is gold and silver, and that which takes their place, such as paper money and other kinds of money.

Forms of sarf (exchange):

Sarf takes two forms, as explained in the definition:

- **The first form** is where the cash exchanged is of one kind, such as dollars for dollars. In this case two conditions are stipulated:

1. That the cash be equal in value.
2. That the exchange take place before parting.

- **The second form** is where the cash exchanged is of two different types, such as riyals for dollars. In this case, only one condition is stipulated, which is that the exchange take place before parting; it is not stipulated that they be equal in value.

Evidence for that:

The evidence for that is the same evidence that was mentioned with regard to riba al-fadl and riba an-nasee'ah.

Selling currency on the Forex and the like:

In principle there is nothing wrong with trading in currencies, if the currencies are different, such as selling euros for dollars. That is permissible, but it is stipulated that the exchange take place in the meeting in which the deal is drawn up.

If the currency is the same, such as selling riyals for riyals, in order for it to be permissible there are two conditions: what is exchanged should be of equal value and the exchange should take place in the meeting in which the deal is drawn up. That is because when the currency is the same, it is like trading the same commodity that is vulnerable to riba.

Activities

1. Why is interest on bank accounts prohibited and regarded as being riba?

2. The basic Islamic principle with regard to riba is that "every loan that brings a benefit is riba." Explain this phrase.

3. List some forms of riba an-nasee'ah, explaining the reason why it is riba in the case of gold and silver.

4. Explain what is the ruling on the following transactions and why, in the light of what you have studied:

   a. A man sells one hundred grams of gold for one hundred grams of gold, to be received in a month's time.

   b. A man sells fifty grams of silver for ten grams of silver, to be received the following day.

   c. A man sells a saa' of high-quality dates for two saa's of poor-quality dates, and the exchange takes place on the spot.

   d. A man sells fifty kilograms of wheat for a sheep, to be received in a week's time.

   e. A man sells one hundred dollars for two hundred dollars to be paid later on.

   f. A man buys one thousand Saudi riyals for three thousand Egyptian pounds, and the exchange takes place on the spot.

2. Deceit

Definition of deceit:

In linguistic terms, the Arabic word ghish (translated here as deceit) is the opposite of sincerity and refers to showing something different to what one hides.

In Islamic terminology, it refers to concealing a defect which, if the other party was aware of it, he would not accept it.

Ruling on deceit:

Deceit is a haram action. Allah عَزَّوَجَلَّ says: *{Woe to those who give less [than due], who, when they take a measure from people, take in full, but if they give by measure or by weight to them, they cause loss}* [al-Mutaffifeen 83:1-3]. Thus Allah condemns deceit and warns the one who does that of Hell.

Muslim narrated in his Sahih that the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ passed by a pile of foodstuff. He put his hand in it and his fingers touched something wet. He said: **«What is this, O seller of the food?»** He said: It got rained on, O Messenger of Allah. He said: **«Why did you not put it on top of the food, so that people could see it? Whoever deceives is not of me.»** Narrated by Muslim.

Thus the evidence indicates that deceit is haram and there is scholarly consensus on that.

Forms of deceit

Deceit takes many forms, including the following:

- **Concealing a defect in an item,** when the seller does not disclose it to the purchaser.
- **Deceit in weighing,** by placing a weight in the bottom of the pan of a balance, or tampering with the calibration of the scale, or putting some defective goods in the bag before weighing, and so on.
- **Deceit in construction and in the building of roads,** bridges and so on. This is very widespread, and from time to time we see high-rises collapse and roads deteriorate quickly as a result of deceit in the building of foundations and quality of concrete.

Note:

In order to evade any responsibility after selling, some sellers say when selling: This car has a lot of defects, or this building is not stable, and the like. This does not exonerate him of any responsibility, unless he states in specific terms the faults of which he is aware. If someone is aware of a defect but conceals it, and says something in general terms, as in the examples mentioned above, that does not exonerate him of any responsibility according to the majority of scholars, because he concealed the known defect when what he should have done was disclose it, otherwise it constitutes deceit.

3. Ambiguity

The prohibition on ambiguity is an important principle of buying and selling according to Islamic fiqh. This includes many issues.

Definition:

In linguistic terms, gharar (translated here as ambiguity) means reduction, risk and ignorance.

In Islamic terminology, it refers to that of which the outcome is not known or not clear. It was said that it refers to that which is not possible to deliver, or that of which the nature or amount is not known.

Ruling on ambiguity: ambiguity is haram, because the Prophet ﷺ forbade transactions involving ambiguity, as was narrated in Sahih Muslim from Abu Hurayrah رضي الله عنه.

Guideline on what is disallowed with regard to ambiguity:

1. When there is a great deal of ambiguity.
2. When it is possible to avoid ambiguity without going to a great deal of trouble.
3. When there is no need for this ambiguity.

Types of ambiguity:

Many transactions which are prohibited according to Islamic teachings are prohibited because of ambiguity, such as the prohibition on transactions in which touching the item for sale makes the sale binding (mulamasah); transactions in which traders throw items to one another, whereupon the transaction becomes binding (munabadhah); transactions done on the basis of throwing pebbles in which buying whatever the pebbles land on becomes binding; selling fruit before it is known whether it is good; selling a foetus in the uterus of an animal or selling milk in the udder; selling that which cannot be delivered, such as birds in the air or fish in the sea; and selling that which one does not own.

In the modern era:

Ambiguity occurs in many forms, the most well-known of which include: commercial insurance, lottery tickets, multi-level marketing and pyramid schemes. Anything that is forbidden because it is akin to gambling is forbidden because the outcome is unknown, hence it comes under the heading of ambiguity which is prohibited, which is ambiguity that leads to enmity and rancour among the Muslims.

Shaykh al-Islam said regarding ambiguity: It leads to the evil outcomes of gambling, which is the stirring up of enmity and rancour, in addition to what it involves of consuming people's wealth unlawfully, which is a type of wrongdoing. Therefore ambiguous transactions constitute wrongdoing, enmity and rancour.

Activities

1. **Give a definition of deceit both in linguistic terms and in Islamic terminology, and mention some modern forms of deceit.**

.....

2. **Give a definition of ambiguity both in linguistic terms and in Islamic terminology, state what the ruling on it is, and list its types.**

.....

3. **What are the most well-known modern transactions in which ambiguity occurs?**

.....

4. **One of the main guidelines according to which transactions are prohibited is whether they are akin to gambling. Write a brief essay about that.**

.....

4

Novel contemporary financial issues

Novel contemporary financial issues

Selling shares:

A share is what a shareholder owns of a portion of the capital of a company.

Ruling: It is permissible to buy and sell shares in companies whose business activities are permissible, such as agricultural and industrial companies that are free of riba-based transactions, so long as the seller owns the shares. If the activities of the company are haram, such as selling alcohol, tobacco and the like, it is not permissible to buy or sell shares in it.

It is not permissible to trade in mixed shares, which are shares in companies whose activities are basically permissible, but they deal in haram things such as accepting interest, borrowing on the basis of interest, or engaging in contracts that are invalid. This was stated by the Fiqh Council, because the basic principle is that when there is a combination of halal and haram elements, the focus will be on what is haram, so as to err on the side of caution.

Selling bonds:

A bond is a contract written by a bank or company, promising to pay the bearer a certain amount of money, with interest at a specific rate, in return for what the customer pays to the bank or company.

Ruling: dealing in bonds is haram according to Islamic teachings, because it is a kind of riba-based loan.

The difference between shares and bonds:

A share represents a share in a company, so the shareholder is a partner in that company, and makes gains and incurs losses with it.

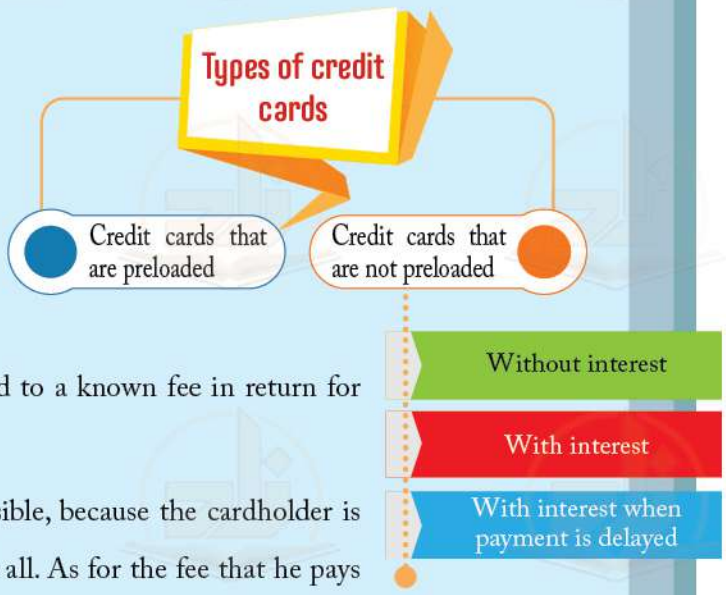
A bond, on the other hand, represents a debt owed by the company. Thus the bondholder is lending to the company, so it is not permissible for him to take any interest on his loan, so that it will not be a loan that brings benefits.

Credit cards:

Definition: A credit card is a card issued by a bank or other institution which allows the cardholder to buy what he needs of goods or services from his balance, or on credit owed to the issuer of the card, if he does not have anything in his account.

The most famous credit cards are: American Express, Visa and MasterCard.

Credit cards are of two types:



- **The first type is preloaded credit cards, in which the cardholder already has money on his card,** for which the issuer is entitled to a known fee in return for issuing it.

The ruling on this type is that it is permissible, because the cardholder is using his own balance, so there is no loan at all. As for the fee that he pays for it to be issued, that is a permissible fee.

- **The second type is credit cards that are not preloaded and there is no money on them. These are of three types:**

1. **The first type** is a means of paying with a loan from the issuer of the card, without incurring interest on the loan at all.

The ruling on this type is that it is permissible, because it is free of anything contrary to Islamic teachings.

2. **The second type** is a means of buying on credit with a loan from the issuer, which results in interest on the debt in all cases, whether payment is delayed or not.

The ruling on this type is that it is haram because it involves riba.

3 **The third type** is a means of buying on credit with a loan from the issuer, with the stipulation that any delay in payment will result in interest being charged.

The ruling on this type is that it is haram, because it includes a condition that stipulates riba.

Rulings on credit cards:

- If the credit card is not preloaded, then it is not permissible to issue it or use it, unless it is like a goodly loan, that is, one on which no interest is charged at all.
- It is permissible for the issuer of the card to charge fees when issuing it or renewing it, because that is a real fee for services offered. That is on condition that the fees are not connected to the amount or duration of the loan.

Rent-to-own:

Definition:

two parties agree that one of them will rent to the other a specific item – real estate or a car – in return for a specific fee to be paid in instalments for a specific period. At the end of that period, when all instalments have been paid, the rental contract will end with the renter taking possession of that item.

In reality, this is a sales contract in the guise of a rental contract, because both parties intend a sales contract from the outset. So it is a sale by instalments, in which transfer of ownership is delayed until the last instalment is paid.

An explanation of the permissible way of doing this type of contract was given in a statement issued by the Islamic Fiqh Council, which said:

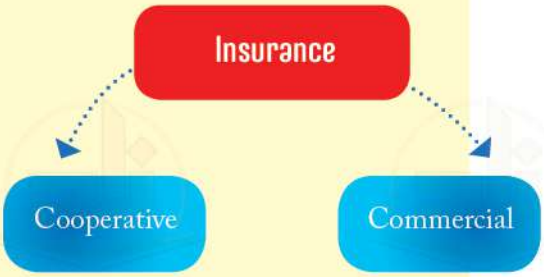
- **It is essential that there be two separate contracts, each independent of the other in terms of time, so that the sale contract comes after the rental contract, and the latter should be rent in a real sense and not a cover for the sale.**

For Your Information

- **Or they should do a rental contract, with the owner giving the renter the option, after making all the rental payments, of buying the rented item for the market price at the end of the rental period.**
- **Or he may draw up a rental contract that allows the renter to make use of the rented item in return for a known fee, for a known period. And there could be a promise to sell the rented item to the renter after he has paid the rent in full, for a price agreed upon by both parties.**

Insurance:

Insurance may be divided into two categories:



1. Cooperative insurance:

Definition: This is insurance that is set up through the contributions of many people, as each individual gives a set amount of money that is allocated to compensate anyone who is harmed or injured, by way of a donation and by way of supporting and consoling one another at the time of calamity.

The ruling on this type of insurance is that it is permissible, for the following reasons:

- Because it is in harmony with the general principles and guidelines of Islamic teachings.
- Because it is free of anything that is contrary to Islamic teachings.
- Because it is based purely on cooperation, in which all participants contribute to facing the risk of calamity and share responsibility.
- Because it is not for the purpose of profit.

The fact that the contributors in the case of cooperative insurance do not know exactly what benefits they will get does not matter, because in effect they are donating their money, so there is no element of risk, ambiguity or gambling, unlike in the case of commercial insurance – as we shall see below – which is a commercial, financial transaction.

2. Commercial insurance

Definition: This is a contract between two parties, the insurance company and the one who is insured (the policyholder). The policyholder has to pay a certain amount of money to the company, in return for which the company promises to pay an amount of money that may be more or less than what he paid, in the event of the policyholder undergoing an accident or calamity, or something happening to his house or car, and the like.

The difference between cooperative insurance and commercial insurance:

The monthly contributions in the case of cooperative insurance are not owned by the administration of the fund; rather they are donations which are to be spent on those to whom the conditions apply.

In contrast, the administration of commercial insurance funds own those premiums that have been paid by the policyholders, which are paid into the company's own account, in return for which the company commits to what it has agreed to pay [in the event of a calamity].

The ruling on this type of insurance is that it is haram, for the following reasons:

- **Because it involves a huge amount of ambiguity.** The individual does not know how much money he will get, and the company does not know how much it will pay out. It is not known when the accident will happen or what the extent of it will be. This is exactly the type of ambiguity that is prohibited.
- **Because it involves gambling,** as the policyholder may not get back any of the money he pays in, or he may get less or more; he may receive many times more than what he paid.
- **Because it involves riba of both types: riba al-fadl and riba an-nasee'ah,** as he pays a sum of money, then he may receive more than that or less, with a delay in receiving the money.
- **Because it involves betting,** which is prohibited, because it is based on pure luck.

Some statistics by a German expert show that what is given back to people of what they pay in insurance premiums does not even reach 2.9%.

The International Islamic Fiqh Council has issued a statement that commercial insurance of all types is prohibited, whether it is life insurance or insurance on commercial goods or other types of wealth.

Activities

1. Explain the difference between shares and bonds in terms of definition and rulings thereon.

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2. List the types of credit cards, explaining the ruling on each type and the evidence for that.

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3. What is the ruling on issuing a credit card with the stipulation that interest be paid in the event of any delay in paying off the loan for a year?

.....

.....

4. Explain the connection between ambiguity and rent-to-own contracts.

.....

.....

5. Explain the difference between cooperative insurance and commercial insurance in terms of definition and rulings thereon.

.....

.....

Contemporary types of competitions and gambling

Ruling on competitions

Islamic teachings forbid competitions (for prizes) except in three cases, which are horseracing, camel racing and archery, because the Messenger of Allah ﷺ said: **«There should be no prize except for a camel race, archery contest or horse race.»** Narrated by Ahmad, Abu Dawud, at-Tirmidhi and an-Nasai; classed as sahih by al-Albani.

It is valid for the prize to come from one of the two competitors, or from both of them, or from a third party.

By analogy with the three types of competition mentioned in the hadith, anything that can help in preparation for fighting in Allah's cause and supporting His religion – such as prizes in competitions involving tanks, planes, weapons, shooting and the like – are also permissible.

It is also permissible to hold competitions in Islamic knowledge, such as memorizing the Quran and Sunnah, and Islamic studies.

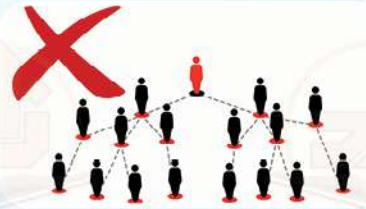
Based on that, any contest in which there is a prize in fields other than the three mentioned in the hadith – namely camel racing, archery and horseracing – is haram, even if the activity in and of itself is permissible, such as competitions in geography, mathematics, history and the like. Competitions in these fields are permissible if no prize is offered.

The prohibition is more emphatic in the case of competitions in the performing arts, such as knowing the names of performers, recognizing their pictures, or knowing the name of movies, songs, directors or singers.

Some of the most common contemporary forms of gambling include:

- **Gambling by phone or through satellite channels,** which involves making a phone call to the organizer of the contest, for which there is a charge, small or great. If a caller is selected, he can win a large amount of money or a car, otherwise he loses the cost of the call.

These contests are clearly based on risk and gambling, because losing is a certainty whereas winning is merely a possibility.



- **Multilevel marketing and pyramid schemes,** because they stipulate that one must pay a sum of money to join the scheme, then the subscriber may or may not make money.

- **Lotteries,** which are contests in which people buy tickets for a small price in the hope of winning a large amount of money by means of drawing lots. This comes under the heading of gambling, which is haram.

All these types involve consuming people's wealth unlawfully and unjustly. Allah عَزَّوَجَلَّ says: *{And do not consume one another's wealth unjustly}* [al-Baqarah 2:188].

Activities

1. Write a brief essay about the ruling on television contests, based on evidence from the Quran and Sunnah.

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2. Based on what you have studied, explain in detail the reasons why telephone and television contests, and other kinds of competitions, are prohibited.

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3. One of the best books on the issue of competitions in Islamic fiqh is the book al-Furusiyyah by Ibn al-Qayyim. After reading this book, write a summary of what you have learned from it.

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5

Fiqh of the family (marriage)

Fiqh of the family (marriage)

Marriage:

Islam encourages and promotes marriage, because of the great interests that it serves and the immense benefits that it brings to both individuals and society. The purposes of marriage cannot be achieved in full unless the marriage is in accordance with the teachings of our Messenger ﷺ. Therefore it is very important for the Muslim, and the one who wants to get married, to understand the rulings on marriage.

Definition of marriage (nikah):

In linguistic terms, nikah (translated here as marriage) refers to embracing and intermingling. A related word is used to refer to trees of which the branches become interwoven.

In Islamic terminology, nikah is a contract which makes it permissible for each spouse to enjoy intimacy with the other, in a permissible manner.

Marriage is prescribed according to the Quran and Sunnah, and scholarly consensus:

- Allah عَزَّوَجَلَّ says: *{then marry those that please you of [other] women, two or three or four}* [an-Nisa 4:3].
- The Prophet ﷺ said: **«O young men, whoever among you is able for it, let him get married, and whoever is not able for it, let him fast, for it will be a shield for him.»** Agreed upon.

The word translated as **«able for it»** may refer to two things: **the ability to have intercourse** and **the ability to afford the costs of marriage**.

The Prophet ﷺ got married, and he said: **«And I marry women. Whoever turns away from my Sunnah is not of me.»** Agreed upon.

Ibn Qudamah said: The Muslims are unanimously agreed that marriage is prescribed.

Ruling on marriage:

- The basic principle is that marriage is permissible. It may be obligatory, if a person has desire and fears that he may commit haram actions.
- It may be recommended (mustahabb) if he has desire but does not fear that he may commit haram actions.

The reason why marriage is prescribed:

Allah is Most Wise in what He prescribes and enjoins. The scholars have listed many aspects of the wisdom behind the prescription of marriage, including: perpetuation of humankind and increasing the number of Muslims; marriage helps a person to avert his gaze and guard his chastity, and it protects society from shameful and immoral deeds; it enables both spouses to find comfort and love; and there are other great interests that are served by marriage.

Choosing a wife:

It is Sunnah to seek a wife who is religiously committed and chaste, because the Prophet ﷺ said: **«A woman may be married for four things: her wealth, her status, her beauty and her religious commitment. Choose the one who is religiously committed, may your hands be rubbed with dust [that is, may you prosper].»** Agreed upon.

If she is religiously committed, then it does not matter after that if she is rich, of high status or beautiful.

It is preferable for her to be a virgin, because the Prophet ﷺ said to Jabir رضي الله عنه: **«Why did you not marry a virgin, so that you could play with her and she could play with you?»** Agreed upon. But if there is an interest to be served by marrying a previously-married woman, there is nothing wrong with that.

It is Sunnah to seek one who is fertile, because this will contribute to increasing the numbers of the ummah. The Prophet ﷺ said: **«Marry those who are loving and fertile, for I will be proud of your large numbers before the nations.»** Narrated by Abu Dawud; classed as sahih by al-Albani.

Choosing a husband:

A woman should not accept as a husband anyone except one who is pleasing in terms of his religious commitment and character. It was narrated that Abu Hatim al-Muzani رضي الله عنه said: The Messenger of Allah ﷺ said: **«If there comes to you one with whose religious commitment and character you are pleased, then give [your daughter] to him in marriage, for if you do not do that, there will be fitnah in the land and widespread mischief.»** He said it three times. Narrated and classed as hasan by at-Tirmidhi.

Religious commitment and a good character form the foundation on which the family is built, and they are the right criteria in choosing a righteous husband.

The marriage contract:

Essential parts:

The marriage contract has two essential parts:

The first is that the prospective spouses should be free of any impediments, as outlined by Islamic teachings, that could lead to the marriage contract being rendered invalid.

The second is the proposal and acceptance.

The proposal is words uttered by the guardian or the one who is acting in his stead, such as his saying to the husband: I give So and So to you in marriage.

The acceptance is words uttered by the husband or whoever is acting in his stead, such as his saying: I accept this marriage.

The marriage contract is done by using any words that refer to marriage, and it is not limited to specific words, according to the more correct scholarly view, because the wording is not done as an act of worship. Hence whatever is customary is valid.

Conditions of the marriage contract being valid:

In order for the marriage contract to be valid, there are four conditions:

Firstly: the identity of the couple must be known, so that the testimony concerning them will be valid.

Secondly: the woman must give her consent, because the Prophet ﷺ said: **«The previously-married woman cannot be given in marriage until she is consulted, and a virgin cannot be given in marriage except with her permission.»** Agreed upon.

Thirdly: there must be a guardian (wali). A woman cannot get married except with a guardian, even if she was previously married, according to the correct scholarly view, because the Prophet ﷺ said: **«There is no marriage except with a guardian.»** Narrated by Ahmad, Abu Dawud and at-Tirmidhi; classed as sahih by al-Albani.

And he ﷺ said: **«One woman cannot give another woman in marriage, and a woman cannot give herself in marriage.»** Narrated by Ibn Majah; classed as sahih by al-Albani.

And because of the hadith of Aisha رضي الله عنها, according to which the Messenger of Allah ﷺ said: **«Any woman who gets married without the permission of her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid.»** Narrated by Ahmad and by at-Tirmidhi, who classed it as hasan.

With regard to the guardian, it is stipulated that he be of sound mind, an adult, male, of good character, and mature in thinking, in addition to his being aware of what is in the best interests of the woman under his guardianship.

It is not valid for a woman to be a guardian for the purpose of marriage under any circumstances, because a woman does not have the right to offer herself or anyone else in marriage.

The mahr (dowry): this is wealth given by the husband to which the wife becomes entitled when the marriage contract is done with her, when the marriage is consummated, or when the husband is alone with the wife in the manner prescribed, when there is the possibility of intercourse taking place and there is no refusal on the wife's part.

The mahr is the woman's right over her husband. Allah عز وجل says: *{And give the women [upon marriage] their [bridal] gifts graciously}* [an-Nisa 4:4]. The prescription of the mahr highlights the serious nature and importance of this contract, and it is an honour to the woman.

The mahr is not a condition of the marriage contract being valid, and it is not an essential part thereof, according to the majority of fuqaha. Rather it is something that results from the marriage contract. If the marriage contract is done without mentioning the mahr, it is valid according to the majority, and the woman is entitled to a mahr like that of her peers.

Who is most entitled to be a guardian (wali):

The most entitled of people to be a woman's guardian (wali) is her father, then his father, no matter how far the line of ascent reaches, then her son [and grandson], no matter how far the line of descent reaches, then her full brother, then her half-brother through her father, then their sons, no matter how far the line of descent reaches, then the paternal uncle, then the next closest and the next closest of relatives on her father's side.

If the one who is most closely related is not qualified to be a guardian, then guardianship passes to the next closest. If none of them are qualified to be guardians, then the woman should be given in marriage by the ruler.

Fourthly: there must be witnesses to the marriage contract, because the Prophet ﷺ said: **«There is no marriage except with a guardian and two witnesses of good character.»** Narrated by Ibn Hibban and al-Bayhaqi; classed as sahih by al-Albani.

A woman says: I want to get married, but I have no guardian in the country in which I am living.
The answer is: if there is no guardian or Muslim judge, as is the case in non-Muslim countries, then the Muslim community there can take care of doing the marriage contract. So the woman should appoint someone to be her guardian with regard to marriage, such as the imam of the mosque or someone else who is known to be of good character and competent.
Ibn Qudamah said: If a woman has no guardian and there is no Muslim ruler, then there is a report from Ahmad which indicates that she may be given in marriage by a man of good character, with her permission. End quote.

It is Sunnah to announce the marriage, because the Prophet ﷺ said: **«Announce the marriage.»** Narrated by Ahmad; al-Arna'ut said: It is hasan because of corroborating evidence.

It is also Sunnah to beat the daff (hand drum) and sing permissible songs in which there is no description of beauty, love or romance, so that it will not be a secret marriage, and by way of expressing joy at what Allah has permitted of good things and making the marriage known far and wide.
It was narrated from Aisha رضي الله عنها that she presented a woman as a bride to a man among the Ansar and the Prophet of Allah ﷺ said: **«O Aisha, did you not have any entertainment? For the Ansar are fond of entertainment.»** Narrated by al-Bukhari. What is meant by entertainment is beating the daff and so on.

Objectionable matters in wedding celebrations:

It is not permissible for the wedding party to include mixing, immodest dress, playing of music or singing that includes haram romantic words, indecent words, promiscuous actions or dancing.

Imam Malik رحمه الله was asked about singing and he said: Among us, it is only done by evildoers.

Ash-Shafi'i said: If a man brings people together to listen to the singing of a slave woman, then he is an incompetent fool whose testimony is to be rejected.

When Imam Ahmad was asked about singing, he said: Singing causes hypocrisy to grow in the heart.

Shaykh al-Islam said: All musical instruments are haram.

After this, what Muslim of sound mind could let his married life begin with these great evils?

For Your Information

Women who are forbidden for marriage

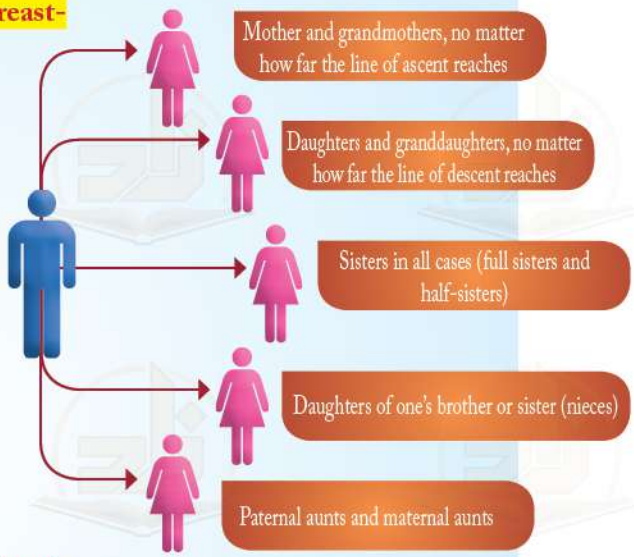
Women who are forbidden for marriage are divided into two categories:

The first category: those who are permanently forbidden.

Reasons for permanent prohibition:

blood ties (being relatives) – ties through breast-feeding – ties through marriage.

Women who are forbidden for marriage because of blood ties:



1. **Those who are forbidden because of blood ties (relatives). They are:**
   - **The mother and grandmother,** no matter how far the line of ascent reaches.
   - **Daughters and their daughters,** no matter how far the line of descent reaches; sons' daughters, no matter how far the line of descent reaches.
   - **Sisters,** including full sisters and half-sisters through the father or mother.
   - **Daughters of one's brother and daughters of one's sister,** no matter how far the line of descent reaches.
   - **Paternal aunts and maternal aunts,** but not their daughters.

The evidence for that is the verse in which Allah عَزَّوَجَلَّ says: *{Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughters…}* [an-Nisa 4:23].

All other women are permissible for marriage, because after listing the women who are prohibited for marriage, Allah عَزَّوَجَلَّ says: *{And lawful to you are [all others] beyond these}* [an-Nisa 4:24].

2. **Those who are forbidden because of ties through breastfeeding.** That which becomes forbidden through breastfeeding is the same as that which becomes forbidden through blood ties. Any woman in the categories mentioned above who is forbidden for marriage because of blood ties, her counterpart through breastfeeding also becomes forbidden, because Allah عَزَّوَجَلَّ says: *{Prohibited to you [for marriage] are … Your [milk] mothers who nursed you, your sisters through nursing…}* [an-Nisa 4:23]. And the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«What becomes mahram (forbidden for marriage) through breastfeeding is that which becomes mahram through blood ties.»** Agreed upon.

In order for breastfeeding to make a woman a mahram, two conditions must be met:

- The breastfeeding must take place within the first two years of life,
- and there should be five complete breastfeedings.

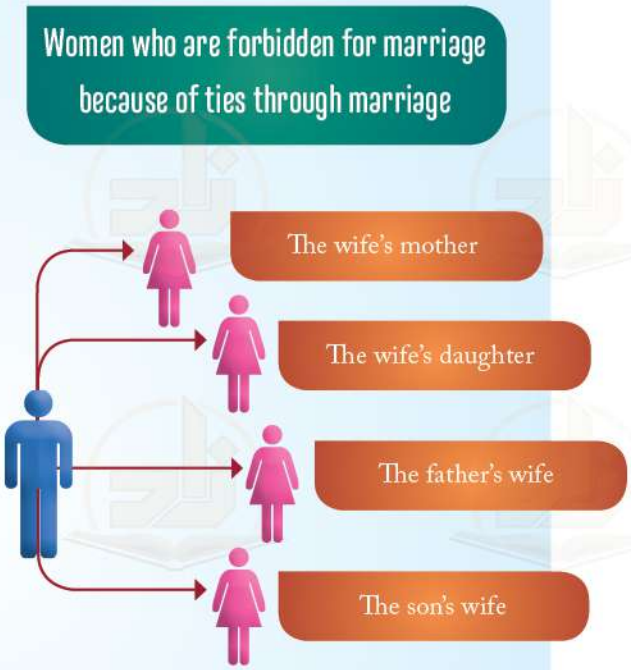
3 **The women who become forbidden for marriage because of ties through marriage (in-laws)** are four:

The first is the wife's mother [and grandmother], no matter how far the line of ascent reaches, because Allah عَزَّوَجَلَّ says: *{your wives' mothers}* [an-Nisa 4:23]. Once the marriage contract is done with a woman, then all her mothers and grandmothers, both through blood ties and breastfeeding, no matter how far the line of ascent reaches, become forbidden for marriage; it is not stipulated that the marriage be consummated.

The second is stepdaughters, who are the daughters of one's wife. A stepdaughter does not become forbidden for marriage until the marriage is consummated with her mother, because Allah عَزَّوَجَلَّ says: *{and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you}* [an-Nisa 4:23].

If a man leaves his wife before consummating the marriage with her, it is permissible for him to marry her daughter.

The stepdaughter (rabeebah) is the daughter of a man's wife from another man (previous husband), no matter how far the line of descent reaches. She is called his rabeebah because he brings her up (tarbiyah).



All women with whom there have been ties through marriage (in-laws) are permissible for a man, except his wife's mother and grandmothers, no matter how far the line of ascent reaches; his wife's daughters and granddaughters, no matter how far the line of descent reaches; the wife of his father or grandfather, no matter how far the line of ascent reaches; and the wife of his son or grandson, no matter how far the line of descent reaches.

The third is the wives of his sons (daughters-in-law); that is, the wives of a man's sons and grandsons, no matter how far the line of descent reaches, because Allah عَزَّوَجَلَّ says: *{And [also prohibited are] the wives of your sons who are from your [own] loins}* [an-Nisa 4:23]. They become forbidden as soon as the marriage contract is done, because of the general meaning of the verse.

The fourth is the wives of his father and grandfathers, no matter how far the line of ascent reaches, whether they are fathers through blood ties or breastfeeding, because Allah عَزَّوَجَلَّ says: *{And do not marry those [women] whom your fathers married, except what has already occurred. Indeed, it was an immorality and hateful [to Allah] and was evil as a way}* [an-Nisa 4:22].

This applies whether the marriage was consummated with them or not, because of the general meaning of the verse.

This is one of the most abhorrent of deeds, because Allah عَزَّوَجَلَّ describes it in serious terms, as He says: *{Indeed, it was an immorality and hateful [to Allah] and was evil as a way}* [an-Nisa 4:22]. Al-Bara ibn Azib رَضِيَ اللَّهُ عَنْهُ said: I met my maternal uncle, and he was carrying the banner. I said: Where are you going? He said: The Messenger of Allah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ has sent me to a man who married his father's wife after he died, to strike his neck or execute him. Narrated and classed as hasan by at-Tirmidhi.

The second category is those who are temporarily forbidden for marriage. They are of two types:

The first type is one who is forbidden because of the prohibition on being married to particular combinations of women in a plural marriage. They are as follows:

- Being married to two sisters at the same time, whether they are sisters through blood ties or through breastfeeding, because Allah عَزَّوَجَلَّ says: *{…and that you take [in marriage] two sisters simultaneously…}* [an-Nisa 4:23].
- Being married to a woman and her paternal aunt, or to a woman and her maternal aunt, at the same time, because the Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said: **«One should not be married to a woman and her paternal aunt, or a woman and her maternal aunt, at the same time.»** Agreed upon.
- Being married to more than four women at the same time, because Allah عَزَّوَجَلَّ says: *{then marry those that please you of [other] women, two or three or four}* [an-Nisa 4:3]. There is scholarly consensus on this matter.

The second type is one who is forbidden for a temporary reason, which may be explained as follows:

- **One who is observing iddah following the end of a previous marriage,** because Allah عَزَّوَجَلَّ says: *{And do not determine to undertake a marriage contract until the decreed period reaches its end}* [al-Baqarah 2:235].
- **A zaniyah if her zina is known, unless she repents and completes her iddah,** because Allah عَزَّوَجَلَّ says: *{The fornicator does not marry except a [female] fornicator or polytheist, and none marries her except a fornicator or a polytheist, and that has been made unlawful to the believers}* [an-Nur 24:3].
- **A woman who has been thrice divorced. She becomes forbidden for her husband who divorced her three times, until she has been married to another man in a valid marriage,** because Allah عَزَّوَجَلَّ says: *{Divorce is twice. … And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him}* [al-Baqarah 2:229-230].
- **A woman who is in ihram, until she has exited her ihram,** because the Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said: **«The muhrim (pilgrim in ihram) should not get married, have a marriage arranged for him or propose marriage.»** Narrated by Muslim.

It is haram for a disbelieving man to marry a Muslim woman, according to scholarly consensus, because Allah عَزَّوَجَلَّ says: *{And do not marry polytheistic men [to your women] until they believe}* [al-Baqarah 2:221].

Forbidden types of marriage:

1. **Shighar (quid pro quo) marriage:** That is because the Messenger of Allah صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ forbade shighar. Ibn Umar رَضِيَ اللَّهُ عَنْهُمَا said: Shighar is when a man gives his daughter in marriage to another man, on condition that the other man gave him his daughter in marriage, with no mahr between them. Agreed upon.
2. **Tahlil marriage:** This refers to when a man marries a woman who has been thrice divorced in order to make her permissible for her first husband, then he divorces her.

A Muslim man should not marry a disbelieving woman, except a chaste woman from among the People of the Book, because Allah عَزَّوَجَلَّ says: *{This day [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you and your food is lawful for them. And [lawful in marriage are] chaste women from among the believers and chaste women from among those who were given the Scripture before you, when you have given them their due compensation}* [al-Ma'idah 5:5].

This also applies even if he intended tahlil without mentioning that condition in the marriage contract, or the two parties agreed to that before doing the marriage contract. In all cases, the marriage is invalid, because the Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said: **«Shall I not tell you of a borrowed billy-goat?»** They said, Yes, O Messenger of Allah. He said, **«He is al-muhallil [the one who marries a woman and divorces her so that it becomes permissible for her to go back to her first husband]. May Allah curse al-muhallil and al-muhallal lahu [the one for whom tahlil is done].»** Narrated by Ibn Majah; classed as hasan by al-Albani.

3. Mut'ah marriage. This is when a man marries a woman in return for money, for a specific period, at the end of which the marriage comes to an end without divorce (talaq).

It was permitted at the beginning of Islam, then it was forbidden. The Messenger of Allah ﷺ said: **«O people, I used to allow you to engage in mut'ah marriages, but now Allah has forbidden that until the Day of Resurrection.»** Narrated by Muslim.

Al-Bukhari and Muslim narrated from Hasan and Abdullah, the two sons of Muhammad ibn al-Hanafiyah, from their father, that he heard Ali ibn Abi Talib رضي الله عنه say to Ibn Abbas رضي الله عنهما: "The Messenger of Allah ﷺ forbade mut'ah marriage with women on the day of Khaybar, and [he forbade] eating the meat of donkeys.

It is haram according to scholarly consensus, and none of those who claim to be Muslim permit it except the Rafidis.

Al-Qurtubi said: The earlier and later generations are agreed that it – namely mut'ah marriage – is forbidden, except those whose view is not worth paying attention to, namely the Rafidis.

One of the cities in which mut'ah is widespread has been described as the most promiscuous city in Asia!

- Mut'ah marriage leads to many serious negative consequences, such as neglect of children with no one to give them proper care, corruption of women, abuse of women, mixing of lineages, and the spread of immorality, permissiveness and promiscuity.
- Moreover, it is contrary to the objectives of marriage, such as stability, formation of a household and family, perpetuation of humankind and increasing the numbers of the ummah of Muhammad ﷺ.

There are some important questions:

- Are the negative consequences and mischief that result from zina any less than those that result from mut'ah?
- How can people know who their children are?
- Who can guarantee that a woman is ensuring that she is not pregnant from a previous mut'ah marriage before embarking on a new one? That can lead to mixing of lineages.
- How can we describe a society filled with children who have no fathers and no one to care for them or be responsible for them?

For Your Information

Activities

1. The scholars said: The marriage contract is subject to the five rulings. Explain what they meant by that.

.....

2. A man did a marriage contract for two people, whilst he was in ihram for Hajj. What is the ruling on this marriage contract? Use other sources.

.....

3. Write a brief essay about a previously-married woman giving herself in marriage without a guardian (wali).

.....

4. Which condition is more important with regard to the marriage contract: having witnesses or announcing the marriage? Give evidence.

.....

5. Draw a diagram explaining which women among a man's relatives and his wife's relatives are forbidden for marriage.

.....

6. State the difference between the prohibition on marrying a step-daughter, in contrast to other female in-laws, giving the reason for that and evidence concerning it.

.....

7. Write briefly about which women are temporarily forbidden for marriage.

.....

8. The scholars differed as to whether one who does not pray is a disbeliever, and hence they differed concerning the ruling on his marriage. Which view is more likely to be correct, from your point of view?

.....

6

Continuation of Fiqh of the Family (divorce)

Divorce (talaq)

Definition of divorce:

In linguistic terms, the word talaq (translated here as divorce) refers to letting go and releasing. A related word is used to refer to removing the hobble from a camel and letting it go.

In Islamic terminology, talaq refers to the dissolution of the marriage contract

Talaq refers to complete dissolution of the marriage contract, which is when the divorce is irrevocable, after which the husband cannot take the wife back. The marriage contract may be partially dissolved, if the talaq is revocable, in which case the husband has the right to take the wife back.

The wisdom behind the permissibility of divorce:

Divorce is permissible, because it offers a solution to marital problems when needed, especially when the couple are not getting along and there are a lot of arguments, and the couple are not able to adhere to the limits set by Allah and continue their married life. Then perhaps Allah will compensate them both from His abundance *{But if they separate, Allah will compensate both out of His abundance}* [an-Nisa 4:103].

Permissibility of divorce:

Divorce is permissible according to the Quran and Sunnah, and scholarly consensus.

Allah عَزَّوَجَلَّ says: *{Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment}* [al-Baqarah 2:229].

It was narrated that Ibn Umar رَضِيَ اللَّهُ عَنْهُمَا said: I divorced my wife when she was menstruating. Umar رَضِيَ اللَّهُ عَنْهُ went to the Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ and told him about that, and the Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said: **«Let him take her back, then when she becomes pure, if he wishes he may divorce her.»** Narrated by Muslim.

Ibn Qudamah said: The scholars are unanimously agreed that divorce is permissible.

> With regard to divorce, reference must be made to the qadi, as he is the one who should judge concerning that and decide concerning disputes that arise from it.

Ruling on divorce:

The ruling on divorce varies from one situation to another, as follows:

Permissible: it may be permissible when there is a need for it, such as if the wife has a bad attitude and behaves badly, and is always arguing.

Disliked (makruh): divorce is disliked if there is no need for it, because it causes harm to both spouses, and because it undermines the objective of marriage, which is intended to achieve several purposes.

For Your Information

Prohibited (haram): divorce is prohibited if the husband divorces his wife when she is menstruating or bleeding following childbirth, or during a period of purity in which he has had intercourse with her, as in the case of the "bidah divorce."

Obligatory: divorce may be obligatory, such as the **divorce of one who swore an eelaa oath,** swearing not to have intercourse with his wife for more than four months, if that period expires without him taking her back and having intercourse with her. In that case, the qadi must compel him to divorce her.

Recommended (mustahabb): divorce may be recommended in the case of harm, such as if the woman will be harmed if the marriage continues. In that case it is recommended to divorce her, so as to relieve her of harm.

Format or wording of divorce:

The format or wording of divorce is certain words and phrases by means of which divorce takes place if one utters them; they must be uttered out loud, and the mere intention of divorce does not count as such, because the Prophet ﷺ said: **«Indeed Allah has pardoned my ummah for that which crosses their minds or they think of to themselves, so long as they do not act upon it or speak of it.»** Agreed upon.

Swearing an oath by mentioning divorce is a widespread problem

That includes saying, "I am bound to divorce you if you go to your family's house" or, "You should leave the house now," or "If you do such and such, then you are divorced"! This is a serious matter, and the majority of fuqaha are of the view that the divorce counts as such if the wife goes against the husband's wishes and does the thing mentioned in the oath, or if the condition is met.

Shaykh al-Islam was of the view that if the husband intended to prevent his wife from doing something or to pressure her to do something by saying these words – which is what is usually the case – then it is regarded as being like an oath. Even though this view makes the matter easier, it does not detract from the seriousness of this matter.

The wording of divorce is divided into two categories, as follows:

1 Explicit wording:

This refers to words that cannot be understood as meaning anything except divorce. This is the word talaq **(divorce)** and words that are derived from it, such as saying, "Anti taliq (you are divorced)," "Anti mutallaqah (you are divorced)", "Tallaqtuki (I have divorced you)" and so on. The divorce counts as such even if it was not intended, and regardless of whether the words were spoken in earnest or in jest, because the Prophet ﷺ said: **«There are three things which when they are said in earnest they count and when they are said in jest they count: marriage, divorce and taking back one's wife [before the end of the iddah].»** Narrated by Abu Dawud, at-Tirmidhi and Ibn Majah; classed as hasan by al-Albani.

2 Implicit wording:

This includes words that may be understood as referring to divorce or to something else.

In this case, it does not count as a divorce unless the husband intended to divorce his wife when saying these words, because these words are not used to refer to divorce in an absolute sense; rather they may refer to something else.

Examples of that include saying, "You are released," "Go and join your family," "Get out," "You are free," "I have no need of you," and so on, which may refer to divorce or may refer to something else. Talaq cannot take place by uttering such wording unless the husband intends to divorce his wife when saying them.

> Phrases such as "You are divorced" or "I have divorced you" are explicit terms.
>
> Phrases such as "You are released" or "You're out" or "You are free" or "Go and join your family" or "Get out" are implicit terms.

Types of divorce in terms of whether it is in accordance with Islamic teachings:

In this regard, divorce is divided into two categories:

- **The first category is Sunnah divorce.** This is divorce that is done by issuing one talaq during a period of purity in which no intercourse has taken place, or when the wife is pregnant.

The evidence from the Quran is the verse in which Allah عَزَّوَجَلَّ says: *{O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period}* [at-Talaq 65:1]. In other words, at the time when they can start the iddah, which is when they have become pure following menses, without any intercourse having taken place.

The evidence from the Sunnah: it was narrated from Ibn Umar رَضِيَ اللَّهُ عَنْهُمَا that he divorced his wife when she was menstruating. Umar رَضِيَ اللَّهُ عَنْهُ mentioned that to the Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ and he said: **«Tell him to take her back, then divorce her when she becomes pure or pregnant.»** Narrated by Muslim.

Scholarly consensus: the scholars are unanimously agreed that the one who divorces his wife in accordance with the Sunnah is the one who divorces her in a period of purity in which he has not had intercourse with her, and issues one talaq.

Sunnah divorce does not mean that it is something enjoined in the Sunnah and recommended (mustahabb); rather it means divorce that is done at the prescribed time, in the prescribed manner.

The second category is bidah divorce, which is done by not following the Sunnah way of divorce in one of two matters:

1. **The number of talaqs,** such as divorcing her by mentioning the word of divorce more than once on one occasion, or divorcing her on several separate occasions before the end of the iddah, such as saying, **"You are divorced three times," or "You are thrice divorced," or "You are divorced, divorced, divorced,"** or **"You are divorced, you are divorced, you are divorced."**

2. **The timing of the divorce,** such as divorcing her when she is menstruating, or during a period of purity in which the husband has had intercourse with her and it is not yet clear whether she has become pregnant as a result.

The scholars differed as to whether divorce during the woman's menses counts as such. The majority of scholars are of the view that it does count.

Categories of divorce in terms of whether the husband can take his wife back

In terms of whether the husband can take his wife back, divorce is divided into two categories:

1. **The first category is revocable divorce,** in which the husband has the right to take back his wife with whom he had consummated the marriage, during the iddah period, without it being stipulated that she agree to that and without a new marriage contract or new mahr being required.

The wife who is revocably divorced is one with whom the marriage has been consummated and who has been divorced less than three times, so long as her iddah has not yet ended.

In that case, she still comes under the heading of a wife; the husband is obliged to spend on her maintenance [during her iddah] and one may inherit from the other. Allah عَزَّوَجَلَّ says: *{And their husbands have more right to take them back in this [period]}* [al-Baqarah 2:228].

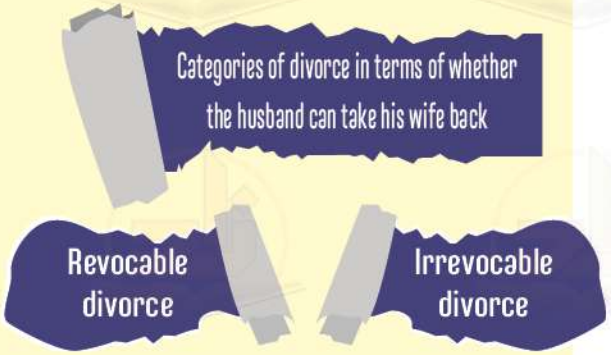
In order to take her back, it is sufficient for the husband to say to his wife: I take you back. It is Sunnah to have witnesses to that.

2. **The second category is irrevocable divorce,** in which the husband has no right to take his wife back except with a new marriage contract.

Divorce in anger:

It should be noted that anger is of three levels:

1. When the person has begun to feel angry, but it has not affected his reasoning or clarity of mind, and he knows what he is saying and what he intends. In this case, his divorce undoubtedly counts as such.
2. When his anger reaches the ultimate level, to the extent that he does not know what he is saying or what he means. There is no difference of scholarly opinion concerning the fact that his divorce in this case does not count as such.
3. When his anger is somewhere between these two levels; it has gone beyond the initial stage but has not yet reached the ultimate limit. In this case, there is a difference of scholarly opinion, but the basic principles of Islamic teaching indicate that divorce in this case does not count as such.



Irrevocability is of two types:

- **Lesser irrevocability:** which is where the number of talaqs is less than three, but the iddah has ended.

  A similar case is that of a woman for whom no iddah is required, who is a woman who is divorced before the marriage is consummated. It is permissible for her husband to marry her again with a new marriage contract.

- **Greater irrevocability:** this is divorce of one in whose case the number of talaqs has been completed, meaning that the last of three talaqs has been issued.

She is not permissible for her first husband until she has married another husband in a genuine marriage in which intercourse occurs, then the second husband leaves her through divorce or death.

The difference between minor irrevocability and major irrevocability is that in the case of minor irrevocability, the woman becomes permissible to the husband with a new marriage contract. But in the case of major irrevocability, she is not permissible for him until after she has been married to another husband, then that marriage comes to an end.

Activities

1. **The five rulings apply to divorce. Explain that in detail.**
2. **Write a brief essay about swearing to divorce one's wife, explaining the view of the majority of scholars.**
3. **What is the ruling on a man saying to his wife: I divorce you – you are divorced? Use other sources.**
4. **"Bidah" is a term that is usually used with regard to matters of creed (aqeedah). Why is it used with regard to divorce, which is a fiqhi matter?**
5. **Write some guidelines in which you discuss cases in which it is permissible for the husband to take his wife back.**

7

Oaths and vows

Oaths and vows

Definition of oaths:

The Arabic word aymaan (translated here as oaths) is the plural of yamin, the meanings of which include oath, strength and blessing. An oath is called yamin because when they swore an oath, each of them would grasp the right hand (yamin) of the other.

In Islamic terminology, it refers to affirming the matter attested to by mentioning the name of Allah or one of His attributes.

Swearing oaths is permissible according to the Quran and Sunnah, and scholarly consensus.

Allah عَزَّوَجَلَّ says: *{Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for [breaking] what you intended of oaths}* [al-Ma'idah 5:89].

The Messenger of Allah صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«Indeed I – if Allah wills – do not swear an oath then see something else that is better than it, but I will do that which is better, and offer expiation [for breaking my oath].»** Agreed upon.

Ibn Qudamah said: The ummah is unanimously agreed that swearing oaths is permissible and the rulings connected to that are all proven.

Ruling on oaths:

The basic principle is that swearing oaths is permissible.

- **It is obligatory** if the aim behind it is to affirm the truth, or make a claim before a judge, so as to ward off injustice and wrongdoing.
- **It is recommended (mustahabb)** if doing something that is recommended depends on it, such as when it helps to bring about reconciliation between two disputing parties.
- **It is disliked (makruh)** when buying and selling, if it is done for no reason.
- **It is prohibited (haram)** if it is a false oath, or it is an oath to do something prohibited or to refrain from doing something obligatory.

Categories of oaths:

Categories of oaths in terms to how binding they are

- Meaningless oath
- Oath that dooms one to Hell (al-yamin al-ghamus)
- Binding oath

In terms of how binding they are, oaths are divided into three categories:

1. **The first category is meaningless oaths.**

   This refers to swearing the oath without intending to do so, such as when one says, "No by Allah" and "Yes by Allah."

No expiation is required with regard to this type of oath, and there is no blame or accountability with regard to it, because Allah عَزَّوَجَلَّ says: *{Allah will not impose blame upon you for what is meaningless in your oaths}* [al-Ma'idah 5:89].

2. **The second category is the oath that dooms one to Hell (al-yamin al-ghamus).** This is an oath that is sworn about something in the past, deliberately lying about it. This is a major sin from which one is required to repent and restore people's rights if it led to loss of their rights.

The Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«The major sins are: associating others with Allah, disobeying parents, murder, and oaths that doom one to Hell.»** Narrated by al-Bukhari.

It is called ghamus because it immerses (taghmis) the doer in sin, then it will immerse him in the fire of Hell – Allah forbid.

3. **The third category is binding oaths.** This refers to an oath concerning something in the future, with the intention of swearing an oath.

This oath must be fulfilled, or expiation (kafaarah) must be offered **if it is broken,** because Allah عَزَّوَجَلَّ says: *{Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for [breaking] what you intended of oaths. So its expiation is the feeding of ten needy people from the average of that which you feed your [own] families or clothing them or the freeing of a slave. But whoever cannot find [or afford it] - then a fast of three days [is required]. That is the expiation for oaths when you have sworn. But guard your oaths. Thus does Allah make clear to you His verses that you may be grateful}* [al-Ma'idah 5:89].

Breaking the oath means recanting and not fulfilling it.

Expiation for breaking an oath (kafaarat yamin):

Expiation (kafaarah) refers to what the one who breaks his oath gives to compensate for breaking it, by feeding or clothing poor people, freeing a slave or fasting, in expiation for breaking his oath.

Allah عَزَّوَجَلَّ enjoined expiation for breaking an oath in the verse: *{Allah will not impose blame upon you for what is meaningless in your oaths, but He will impose blame upon you for [breaking] what you intended of oaths. So its expiation is the feeding of ten needy people from the average of that which you feed your [own] families or clothing them or the freeing of a slave. But whoever cannot find [or afford it] - then a fast of three days [is required]. That is the expiation for oaths when you have sworn. But guard your oaths}* [al-Ma'idah 5:89].

Anyone who forbids to himself something that Allah has permitted to him, then wants to recant, must offer expiation for breaking his oath:
For example, if he forbids a certain kind of food, or a certain garment or a certain place to himself, then he wants to recant, he must offer expiation like that for breaking his oath. Allah عَزَّوَجَلَّ says: *{O Prophet, why do you prohibit [yourself from] what Allah has made lawful for you, seeking the approval of your wives? And Allah is Forgiving and Merciful. Allah has already ordained for you [Muslims] the dissolution of your oaths}* [at-Tahreem 66:1-2]. Thus Allah عَزَّوَجَلَّ regards his forbidding to himself something that He has permitted as being like an oath, for which expiation must be offered when it is broken. **Similarly, if a man says to his wife: "You have become haram for me," or "You will become haram for me if you do such and such," and he did not intend to issue a divorce or zihar [a jahili form of divorce], then he must offer expiation for breaking an oath.**

This expiation may be done in one of the ways mentioned in the verse; the individual has the choice – in the order mentioned – between feeding ten poor persons or clothing them or freeing a believing slave.

If he is not able to do any of these three, then he moves to the option of fasting for three days. But it is not permissible to choose the option of fasting if one is able to feed or clothe poor persons or free a slave.

The most prudent approach is to fast the three days consecutively, because of the alternate reading of Ibn Mas'ud رَضِيَ اللَّهُ عَنْهُ: "then a fast of three consecutive days [is required]"

When to offer expiation for breaking an oath:

- Expiation becomes obligatory for a person when he breaks his oath and does not do what he swore to do.
- It is permissible to offer expiation before breaking the oath, and it is permissible to do so afterwards.

If he does it before breaking his oath, it is called dissolution of the oath. If he delays that until afterwards, then it is expiation.

The evidence for that is the words of the Prophet ﷺ: **«If you swear to do something, then realize that something else is better, then offer expiation for breaking your oath and do that which is better.»** Agreed upon.

According to a version narrated by al-Bukhari: **«If you swear an oath to do something, then realize that something else is better than it, then do that which is better and offer expiation for breaking your oath.»** Thus the hadiths indicate that it is permissible to offer expiation either before or after breaking the oath.

Ruling on breaking an oath:

The ruling on breaking an oath differs according to what the oath is about, as follows:

What is meant by saying that an oath is binding?

What is meant is that the one who swears the oath intends to commit himself to doing something in the future. It is not just a word that one utters habitually.

1.

It is Sunnah to break an oath if it is broken for a good reason, such as one who swears to do something that is disliked (makruh) or not to do something that is recommended (mandub). He should do that which is better, and offer expiation for breaking his oath.

2.

It is obligatory to break an oath if a person swears not to do something that is obligatory, and he must offer expiation for breaking his oath. For example, if someone swears not to uphold ties of kinship or to do something that is haram, such as swearing to drink alcohol.

3.

It is permissible to break an oath if one swears to do something permissible, or swears not to do it, and he should offer expiation for breaking his oath.

Swearing by anything other than Allah عَزَّوَجَلَّ:

It is not permissible to swear by anything other than Allah عَزَّوَجَلَّ, such as saying: by the Prophet, by your life, by my mother's life, by the value of my life with you, by blessing, by the grave of So and So, by friendship, by bread and salt between us, by my honour, by al-Husayn, by honesty, by the Kaaba, or by al-Mursi (Abu'l-Abbas).

That is because the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«Whoever swears by anything other than Allah has associated something with Him [shirk].»** Narrated by Ahmad and Abu Dawud; classed as sahih by al-Albani.

In as-Sahihayn it is narrated from Ibn Umar رَضِيَ ٱللَّهُ عَنْهُمَا that the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ caught up with Umar when he was among a group of riders, and he was swearing by his father. The Messenger صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ called out to them: **«Indeed Allah عَزَّوَجَلَّ forbids you to swear by your fathers. Whoever must swear, let him swear by Allah or else remain silent.»**

Umar رَضِيَ ٱللَّهُ عَنْهُ said: By Allah, I never swore in that manner again, since I heard the Messenger of Allah صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ forbid that, either deliberately or narrating it from someone else.

And the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«Do not swear by your fathers or by your mothers or by the idols. Do not swear by anything except by Allah, and do not swear except when you are telling the truth.»** Narrated by Abu Dawud and an-Nasai; classed as sahih by al-Albani.

Ibn Mas'ud رَضِيَ ٱللَّهُ عَنْهُ said: To swear by Allah falsely is dearer to me than swearing by anything other than Him truthfully.

Shaykh al-Islam said: The good deed of Tawhid is better than the good deed of truthfulness, and the bad deed of lying is less serious than the bad deed of shirk.

Activities

a Under which category of oaths do the following come:

1 "By Allah, you must eat some of this food."

.....

2 Swearing falsely that this money is his.

.....

3 "By Allah, I will surely visit my friend today."

.....

4 "By Allah, I shall not fast next Friday."

.....

b What is the ruling on breaking an oath in the following cases:

1 Swearing to divorce one's wife.

.....

2 Swearing not to pray Asr.

.....

3 Swearing by Allah that one will fast on Monday and Thursday this week.

.....

4 Swearing to drink alcohol.

.....

c Write a brief essay about offering expiation for breaking an oath in the light of what you have studied.

.....

Vows

Definition of vows:

In linguistic terms, the word nadhr (translated here as vow) refers to compelling. So if you say "Nadhartu kadha (I have vowed such and such)," what is meant is: I have made it obligatory upon myself.
In Islamic terminology, nadhr (vow) refers to an accountable person obliging himself to do something for the sake of Allah عَزَّوَجَلَّ that is not obligatory according to Islamic teachings.

Ruling on vows:

In principle, making vows is disliked **(makruh)** on the basis of the following evidence:

- The hadith of Ibn Umar رَضِيَ اللَّهُ عَنْهُمَا, according to which the Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ forbade vows and said: **«They do not change anything; rather they get something out of the miser.»** Agreed upon.

In al-Bukhari it is narrated that Ibn Umar رَضِيَ اللَّهُ عَنْهُمَا said: Were they not forbidden to make vows? The Prophet صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ said: **«A vow does not bring anything forward or put it back; rather the vow gets something out of the miser.»**

A report narrated by Ibn Majah says: **«A vow only gets something out of the mean person.»** Classed as sahih by al-Albani.

- Moreover, the one who makes a vow commits himself to doing something that is not obligatory according to Islamic teachings, so he is committing himself and burdening himself with that.
- Furthermore, the Muslim is required to do good without vowing to do it, so he should not stipulate conditions to Allah [in order for him to do something good].

Wording of vows:

- In order for a vow to be binding, it is stipulated that it be uttered out loud; intention alone is not sufficient.
- There is no specific wording for a vow; rather anything that is indicative of making a commitment is a vow, such as saying: I vow, or I promise Allah, or I owe it to Allah, or I pledge to Allah that if Allah heals my sick loved one, I shall do such and such. This is the view of the majority of fuqaha.
- If the wording is not indicative of commitment, then it is not regarded as a vow unless he intended that, like a metaphor, such as saying: If I get a job, I shall give one thousand riyals in charity. This is not a vow, unless that was the intention.
- **Note:** if he follows that by saying "inshaAllah," then he is not required to do anything, such as if he says: If I pass the exam, then I owe it to Allah to fast one day, inshaAllah.

For Your Information

Categories of vows:

In terms of fulfilment, vows may be divided into five categories:

1 **Vow to do an act of worship,** such as if the one who makes the vow says: I owe it to Allah, if I pass the exam, I will surely pray such and such, or I will surely fast, and other acts of worship. This vow must be fulfilled, because Allah سُبْحَانَهُ وَتَعَالَى says: *{… and [let them] fulfill their vows}* [al-Hajj 22:29]. And the Prophet ﷺ said: **«Whoever vows to do an act of obedience to Allah, let him obey Him.»** Narrated by al-Bukhari.

2 **Vow to commit sin,** such as saying, I vow to Allah that I shall drink alcohol, or stop praying. This is a haram vow and it is not permissible to fulfil it, because the Prophet ﷺ said: **«… and whoever vows to disobey Allah, let him not disobey Him.»** Narrated by al-Bukhari.

➔ **He should offer expiation like that for breaking an oath, because of the general meaning of the Prophet's words: «The expiation for breaking a vow is the same as the expiation for breaking an oath (kafaarat yamin).»** Narrated by Muslim.

If he vows to do something that is disliked (makruh) – such as vowing to divorce his wife – it is recommended for him not to fulfil the vow, and to offer expiation like that for breaking an oath.

3 **Non-specific vow,** such as when a man says: I owe a vow to Allah, but he does not mention anything specific. In that case he must offer expiation for breaking an oath, because of the hadith of Uqbah ibn Aamir رَضِيَ اللَّهُ عَنْهُ, who said: The Messenger of Allah ﷺ said: **«The expiation for breaking a vow, if a person does not specify what it is, is the same as the expiation for breaking an oath.»** Narrated and classed as hasan by at-Tirmidhi.

4 **Vow when arguing or when angry.** This is a vow that a person makes to prevent himself from doing something or to make himself do something, so it is akin to an oath, such as saying: If I speak to So-and-So, then I must do Hajj, or I must fast for a year.

In this case, the individual has the choice between fulfilling what he failed to do or offering expiation for breaking an oath, because of the hadith of Imran ibn Husayn رَضِيَ اللَّهُ عَنْهُ, who said: I heard the Messenger of Allah ﷺ say: **«A vow made in anger is invalid, and the expiation for it is the same as the expiation for breaking an oath.»** Narrated by an-Nasai; its isnad is daeef.

5 **Permissible vow,** such as vowing to wear one's garment or drive one's car. In this case, the individual has the choice between doing that or offering the expiation for breaking an oath if he does not do it, because the Prophet ﷺ said: **«The expiation for breaking a vow is the same as the expiation for breaking an oath.»** Narrated by Muslim.

Moreover, you should understand that a vow is an act of worship, and it is not permissible to devote it to anyone or anything other than Allah عَزَّوَجَلَّ. So whoever makes a vow to anyone or anything other than Allah has associated something with Him (shirk).

You should also understand that if someone makes a vow to a created being, his vow is not binding and he does not have to fulfil it. In fact it is not permissible for him to fulfil it, according to scholarly consensus.

If someone says: I pledge to Allah, or I promise Allah that I will do such and such:
there is a differentiation between that which is a promise to do an act of worship, in which case it is a vow and he must fulfil it;
and that which is a promise to do something permissible, in which case it is an oath, and he has the choice between fulfilling it or offering expiation for breaking an oath.
Shaykh al-Islam said: If one says: I promise Allah that I will do Hajj this year, then this is a promise, a vow and an oath. But if he says: I shall not speak to Zayd, it is an oath and a promise, but it is not a vow. End quote.
Allah عَزَّوَجَلَّ says: *{And fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned}* [al-Isra 17:34].

Activities

1. **The scholars differed concerning the ruling on vows. Discuss this difference of opinion in brief, stating which view is most likely to be correct, based on evidence.**
2. **Write briefly about the wording of vows.**
3. **What is the connection between a vow made when arguing or in anger, and an oath?**
4. **What are the cases in which it is permissible or obligatory for the one who makes a vow to move to offering the expiation for breaking an oath?**

8

Food

Food

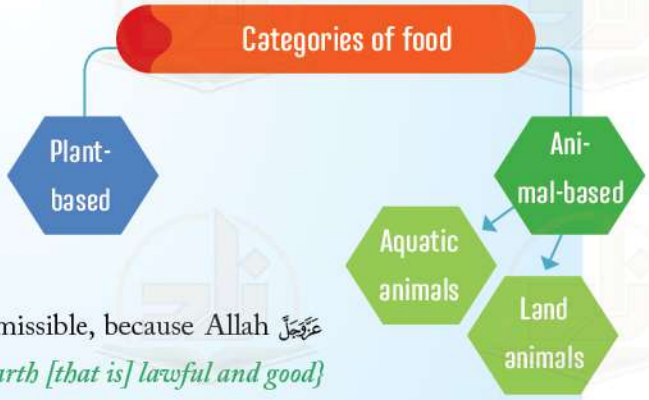
Definition of at'imah (translated here as food). At'imah is the plural of ta'am, which refers to everything that a person eats or drinks, nourishing himself thereby, of staple foods and other foods.

The basic principle with regard to all kinds of good and wholesome food and drink is that they are permissible, and the basic principle with regard to everything that is harmful or filthy is that it is haram, because Allah عَزَّوَجَلَّ says: *{O mankind, eat from whatever is on earth [that is] lawful and good}* [al-Baqarah 2:168] and *{Then eat of what Allah has provided for you [which is] lawful and good}* [an-Nahl 16:114].

There are many texts which support this principle. So any food or drink for which there is no evidence to indicate that it is prohibited remains permissible, in accordance with this principle. Allah has explained clearly to His slaves what He has prohibited to them of food and drink, as He عَزَّوَجَلَّ says: *{He has explained in detail to you what He has forbidden you, excepting that to which you are compelled}* [al-An'am 6:119].

Types of food:

Food is divided into two types: plant-based and animal-based.



1. **Plant-based food** is every food that grows in the ground, trees, herbs, grains and so on.

   The basic principle is that all of it is permissible, because Allah عَزَّوَجَلَّ says: *{O mankind, eat from whatever is on earth [that is] lawful and good}* [al-Baqarah 2:168].

None of it is prohibited except the following:

- That which is harmful to the body if eaten, such as poison, because Allah عَزَّوَجَلَّ says: *{and do not throw [yourselves] with your [own] hands into destruction}* [al-Baqarah 2:195].
- That which is harmful to the intellect, such as alcohol and drugs, because the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said: **«Every intoxicant is khamr and every intoxicant is haram.»** Narrated by Muslim.

2 **Animal-based food,** which is of two types:

The first type is aquatic animals, which are those that live in water such as seas, rivers, lakes and so on. The basic principle is that all of it is permissible, because Allah عَزَّوَجَلَّ says: *{And not alike are the two bodies of water. One is fresh and sweet, palatable for drinking, and one is salty and bitter. And from each you eat tender meat}* [Fatir 35:12] *{Lawful to you is game from the sea and its food as provision for you}* [al-Ma'idah 5:96]. And the Prophet صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ said, when he was asked about the sea: **«Its water is a means of purification and its dead meat [that which is not slaughtered in the prescribed manner] is permissible.»** Narrated by Ahmad and Abu Dawud; by at-Tirmidhi, who classed it as sahih; and by an-Nasai and Ibn Majah.

None of it is haram except that which is harmful, because Allah عَزَّوَجَلَّ says: *{and do not throw [yourselves] with your [own] hands into destruction}* [al-Baqarah 2:195].

The second type is land animals, which are those that live on land. The basic principle is that they are all permissible, because Allah عَزَّوَجَلَّ says: *{O mankind, eat from whatever is on earth [that is] lawful and good}* [al-Baqarah 2:168], except that which Islam says is prohibited, according to the following guidelines:

1 **That which the Lawgiver has stated is haram in and of itself,** such as the flesh of pigs, because Allah عَزَّوَجَلَّ says: *{Prohibited to you are dead animals, blood, the flesh of swine…}* [al-Ma'idah 5:3].

That also includes the flesh of donkeys, because on the day of Khaybar, the Messenger of Allah صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ forbade the flesh of donkeys. Agreed upon.

2 **That which is haram in the light of the guidelines set out by the Lawgiver, such as wild animals that have fangs and birds that have talons,** because the Messenger of Allah صَلَّى ٱللَّهُ عَلَيْهِ وَسَلَّمَ forbade every wild animal that has fangs and every bird that has talons. Narrated by Muslim.

And it is talons and fangs that are used for hunting, which means that the creature is a predator.

3 **That which the Lawgiver has enjoined is to be killed,** such as when the Prophet ﷺ said: **«There are five vermin which are to be killed in the Haram: rats, scorpions, kites (a hawk-like bird), crows and vicious dogs.»** Agreed upon.

Or that which the Lawgiver has forbidden killing, as it was soundly narrated from the Prophet ﷺ that he forbade killing four creatures: ants, bees, hoopoes and shrikes. Narrated by Ahmad, Abu Dawud and Ibn Majah; classed as sahih by al-Albani.

Eating snakes: snakes are haram, because they have venom which could cause harm to the one who eats them, and because the Prophet ﷺ enjoined killing them. If snakes were something that it is permissible to eat, he would not have issued orders to kill them and throw them away without benefitting from them.

Hedgehogs are halal, because Allah عَزَّوَجَلَّ says: *{Say, "I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine - for indeed, it is impure - or it be [that slaughtered in] disobedience, dedicated to other than Allah}* [al-An'am 6:145]. So the basic principle is that things are permissible unless there is proven evidence to the contrary.

4 **That which is born as a result of crossing that which is permissible to eat with that which is forbidden to eat,** such as mules. The Messenger of Allah ﷺ forbade the flesh of mules, as was narrated by Ahmad and at-Tirmidhi, with a sahih isnad.

5 **That which feeds on carcasses and impure things,** such as vultures, crows and other scavengers.

The Messenger of Allah ﷺ forbade eating scavengers and drinking their milk. Narrated by Abu Dawud, at-Tirmidhi and Ibn Majah; classed as sahih by al-Albani.

Scavengers are those that eat dung and garbage, and feed on impure and filthy things, to the extent that their smell changes.

They may include camels, cattle, sheep, chickens and others.

Their flesh, milk and eggs, and anything that comes from them, are haram unless they are detained and fed with pure things.

Horsemeat is halal, based on the general guideline, which is that things are permissible unless there is evidence to the contrary, and because of the report in as-Sahihayn from Asma رَضِيَ اللَّهُ عَنْهَا who said: At the time of the Messenger of Allah ﷺ we slaughtered a horse and ate it.

Frogs: it is haram to eat frogs because the Prophet ﷺ forbade killing them, and there is no way to eat them except by killing them. In addition to that, they are very filthy and off-putting, because they usually feed on insects, such as flies, ants, locusts, spiders, scorpions, beetles and cockroaches, and also worms.

Lizards: lizards are halal according to the majority of scholars, because of the report narrated by al-Bukhari from Khalid ibn al-Walid رضي الله عنه, who said: A grilled lizard was brought to the Prophet ﷺ and he reached out to eat it, but it was said to him: It is lizard, so he withdrew his hand. Khalid said: Is it haram? He said: **«No, but it is not known in the land of my people, and I do not find it appealing.»** So Khalid ate it whilst the Messenger of Allah ﷺ was looking on.

Other haram foods:

- That which has been killed by strangling, whether deliberately or otherwise.
- That which has been killed by a violent blow, by being struck with a stick or heavy object until it died.
- That which has been killed by a head-long fall, meaning that it fell from a high place and died.
- That which has been gored by the horns of another animal and killed.
- That which has been partially eaten by a wild animal; this refers to when a predator attacks it and eats some of it, and it dies as a result of that.

In any of these five cases, if the animal is found when it is still alive and is slaughtered in the prescribed manner, then it becomes permissible to eat, because Allah عز وجل says in the verse of prohibition: *{...except what you [are able to] slaughter [before its death]}* [al-Ma'idah 5:3].

If someone is compelled to eat something haram because he fears severe harm if he does not eat it, it is permissible for him to eat of it only as much as is necessary, because Allah عز وجل says: *{Say, "I do not find within that which was revealed to me [anything] forbidden to one who would eat it unless it be a dead animal or blood spilled out or the flesh of swine - for indeed, it is impure - or it be [that slaughtered in] disobedience, dedicated to other than Allah . But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], then indeed, your Lord is Forgiving and Merciful"}* [al-An'am 6:145].

Activities

1. What is the basic principle regarding food and drink, with evidence?

.....

2. List briefly the guidelines on prohibition with regard to eating animals.

.....

3. The scholars have mentioned the wisdom behind the prohibition on eating predatory birds and animals. Mention what that wisdom is, using other sources.

.....

4. Why is it haram to eat things that the Lawgiver has enjoined us to kill or things that the Lawgiver has forbidden us to kill?

.....

5. In His Book, Allah has forbidden animals killed by strangling or by a violent blow or by a head-long fall or by the goring of horns, and those from which a wild animal has eaten. Why are these things prohibited?

.....

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And Allah is the source of strength.

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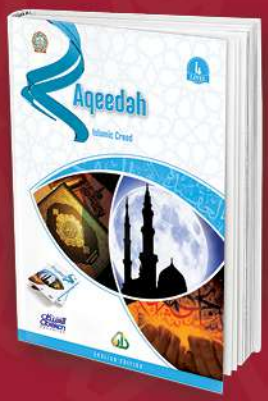

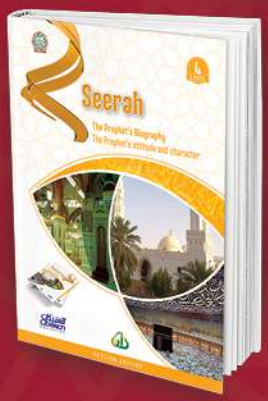

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